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From the Editor:

In this issue . . .

LOUIS FISHER analyzes the drift of the war power from Congress to the president and recommends changes needed to restore legislative and public control over military initiatives.

JOHN S. DUFFIELD examines the reasons for NATO's persistence notwithstanding the demise of the Soviet threat. He describes the most important security functions that NATO still performs for its members in the wake of the cold war.

DARRELL M. WEST looks at the impact of television advertising in political campaigns. He shows that ads are influential when candidates are not well known and when the news media amplify ad messages through their coverage.

YOSSI SHAIN explores the role of immigrant groups—or diasporas as he calls them—in providing support for democratization and self-determination in their ancestral countries. He argues that in the aftermath of the cold war, diasporas in the United States are likely to become more effective in pushing policy makers to adhere to America's professed values of promoting democracy abroad.

CORNELL W. CLAYTON shows how critics of judicial review have mischaracterized recent trends in administrative law. He argues that far from usurping executive branch authority, judges have not been diligent enough in insisting that agencies comply with statutory intent.

JESSICA KORN examines the constitutionality of the legislative veto, a congressional oversight mechanism, one form of which was struck down by the Supreme Court in *INS v. Chadha*.

DONALD R. BRAND reviews recent books on the American presidency by Bruce Miroff, Sidney Milkis, and Stephen Skowronek. He argues that all three books express a republican distrust of the strong executive.

DEMETRIOS CARALEY

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Congressional Checks on Military Initiatives

LOUIS FISHER

Over the past fifty years, presidential war power has continued to expand beyond the model adopted by the Founding Fathers, notwithstanding substantial efforts by Congress since the 1970s to restore a better balance. In recent years, Presidents George Bush and Bill Clinton have both insisted that they may involve the nation in major military initiatives (Bush in Iraq and Clinton in Bosnia and Haiti) without first seeking congressional authority. To an increasing extent, presidents solicit "authority" from the UN Security Council but not from Congress. The concentration of power in the executive branch is dangerous not only to Congress and the country but to the presidency. With few exceptions, presidents from Harry Truman to Clinton have been damaged by unilateral exercises of the war power. For constitutional, political, and partisan reasons, presidents need to obtain congressional authority in advance before engaging the country in military conflicts.

The drift of the war power from Congress to the president after World War II is unmistakable. The Framers' design, deliberately placing in Congress the decision to expend the nation's blood and treasure, has been radically transformed. Presidents now regularly claim that the Commander in Chief Clause empowers them to send American

LOUIS FISHER is Senior Specialist in Separation of Powers at the Congressional Research Service, The Library of Congress. His most recent book is *American Constitutional Law*.

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troops anywhere in the world, including into hostilities, without first seeking legislative approval. In the face of congressional efforts to restore legislative prerogatives, presidents continue to wield military power singlehandedly, agreeing only to consult with legislators and notify them of completed actions. That is not the Framers' model.

President George Bush claimed in 1990 that he could take offensive action against Iraq without any congressional authority. Early in 1991, just before military operations began, he did seek congressional support. Congress passed legislation *authorizing* military action in the Gulf. The powers claimed by Bush have been repeated recently by President Bill Clinton. In October 1993, when Congress considered restrictions on the president's use of American military forces in Somalia and Haiti, Clinton vigorously objected to any congressional interference: "I would strenuously oppose such attempts to encroach on the president's foreign policy powers."[1] While promising to consult with members of Congress, he claimed that "the Constitution leaves the president, for good and sufficient reasons, the ultimate decision-making authority."[2] Acknowledging that the president has an obligation to define and justify the use of U.S. force, Clinton said that "the president must make the ultimate decision."[3]

In February 1994, while contemplating air strikes in Bosnia, President Clinton looked not to Congress for authority but solely to the UN Security Council and to NATO.[4] In August, he "welcomed" the support of Congress for an invasion of Haiti, but added: "Like my predecessors of both parties, I have not agreed that I was constitutionally mandated to get it."[5] In a nationwide televised address in September, he told the American public that he was prepared to use military force to invade Haiti, referring to a UN Security Council as authority and his willingness to lead a multilateral force "to carry out the will of the United Nations."[6] An invasion became unnecessary when former President Jimmy Carter negotiated an agreement in which the military leaders in Haiti agreed to step down to permit the return of ousted Haitian President Jean-Bertrand Aristide. Both Houses of Congress passed legislation stating that "the president should have sought and

[1] *Weekly Compilation of Presidential Documents*, 29 (1993): 2097.
[2] Ibid., 2101.
[3] Ibid., 2102.
[4] *Weekly Compilation of Presidential Documents*, 30 (1994): 219–20.
[5] Ibid., 1616.
[6] Ibid., 1780.

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welcomed Congressional approval before deploying United States Forces to Haiti."[7]

The definition of presidential power put forward by Presidents Bush and Clinton—to send troops anywhere in the world whenever they like—would have astonished the Framers of the Constitution. Their structure of government very consciously rejected the models of John Locke and William Blackstone, which gave the executive exclusive control over foreign affairs and the war power. Instead, the Framers vested in Congress explicit control over the initiation and authorization of war, power over foreign commerce, approval of treaties, confirmation of ambassadors, power of the purse, and other authorities over external affairs.[8]

The trend of presidential war power since World War II—the last congressionally-declared war—collides with the constitutional framework adopted by the Founding Fathers. The period after 1945 created a climate in which presidents regularly breached constitutional principles and democratic values. The scope of presidential war powers climbed to such heights that Congress felt compelled to pass the War Powers Resolution in 1973. Later, in 1980 and 1991, it adopted new statutory procedures to tighten legislative controls over covert actions. The Iran-contra affair of the Reagan administration was merely a recent example of newly-fashioned theories of executive power operating without effective checks from Congress, the judiciary, or the public.

So great is the magnitude of executive power that President Bush invaded Panama in 1989 without any involvement by Congress and announced that he could take military action against Iraq in 1991 solely on the basis of resolutions adopted by the UN Security Council. His threat to act without congressional authorization provoked a grave challenge to constitutional government. To find a comparable crisis we have to go back to 1950, when President Truman violated constitutional and statutory constraints by ordering troops to Korea.[9] Both Truman and Bush claimed they could send American troops into large-scale combat without first receiving authorization from Congress, and

[7] 140 Cong. Rec. S14346 (daily ed. 6 October 1994), passing S. J. Res. 229; 140 Cong. Rec. H11110, H11111-12, H11122 (daily ed. 6 October 1994), passing H. J. Res. 416. A day later the House, by unanimous consent, agreed to S. J. Res. 229; 140 Cong. Rec. H11297 (daily ed. 7 October 1994).

[8] Louis Fisher, *Presidential War Power* (Lawrence: University Press of Kansas, 1995), chap. 1.

[9] Louis Fisher, "The Korean War: On What Legal Basis Did Truman Act?" *American Journal of International Law* 89 (January 1995); Fisher, *Presidential War Power*, chap. 4.

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in each case they justified their actions largely on the basis of resolutions adopted by the UN Security Council. The Clinton administration has embraced the same erroneous legal arguments.

Many justifications have been advanced to defend this fundamental shift in constitutional power. Champions of executive power cite the need for secrecy and prompt action, qualities supposedly associated in some unique fashion with the executive. The Framers knew about dangers and emergencies, and they understood the virtues of speed and secrecy. They lived at risk also but drafted a charter that vested in Congress the crucial responsibility for moving the nation from peace to war. Contemporary justifications for presidential dominance must be examined closely to discard, or at least qualify, explanations that initially may have superficial allure. Some have substance; most are shallow.

Contemporary Justifications

It is often argued that presidential power in the twentieth century must be defined more broadly than the model formulated by the Framers. They agreed that the president could "repel sudden attacks," but advocates of executive power want more elbow room than that. The climate after World War II, they say, is far more dangerous and much more in need of decisive presidential action. Promptness, we are told, is a quality of the executive, not the legislature.

It is simplistic to claim that the conditions of the modern world make it necessary to vest in the president the crucial decision to go to war. If the current risk to national security is great, so is the risk of presidential miscalculation and aggrandizement—all the more reason for insisting that military decisions be thoroughly examined and approved by Congress. Contemporary presidential judgments need more, not less, scrutiny.

The Framers also lived at a dangerous time, possibly more hazardous than today. After granting the president the power to repel sudden attacks, they relied for their safety primarily on Congress. In a succession of statutes, Congress authorized the president to respond to emergencies involving Indians, domestic rebellions, the Barbary conflicts, and other national security issues. Presidents acted on statutory, not inherent, authority. As noted in one study:

> Despite glib assertions of the novelty and gravity of the post-Korean war period, the threats confronting the United States during the first quarter cen-

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> tury of government under the Constitution imperiled the very independence and survival of the nation. The United States Government fought wars against France and England, the two greatest powers of that period, to protect its existence, preserve the balance of power, and defend its commerce. Notably, both conflicts, the Franco-American War [the Quasi-War of 1798-1800] and the War of 1812, were authorized by statute.[10]

In the years following World War II, there has been more than enough time to seek authorization in advance from Congress before committing the nation to war. Even if one could argue that President Truman needed to take immediate "police action" to respond to North Korea's provocation, he had time after that to ask Congress to authorize extended hostilities. Presidents find time to seek advice from executive officials, often over a period of months, before acting. They even reach out to inform allies of planned attacks. Few uses of unilateral force by the president can be explained by genuine emergencies. Contrived emergencies, perhaps, but not real ones. In the period since World War II, only *one* situation justified presidential action in the absence of congressional authority: President Gerald Ford's evacuation of Americans and foreign nationals from Vietnam.

Does the specter of nuclear war—unknown to the Framers—require concentrating in the president the sole responsibility for launching missiles? That is a beguiling, but misleading proposition. There is a difference between first use of nuclear weapons (any initiation of war requires prior congressional authority) and retaliatory second strikes (a unilateral presidential power pursuant to the executive duty to repel sudden attacks). Policy makers generally assume that nuclear weapons would be used only after a conventional war escalates, over a period of weeks or months, to a nuclear confrontation. Time is available within the executive branch to debate and decide the use of nuclear weapons, permitting adequate opportunity for a congressional role.[11]

If presidents decide that an emergency requires action without first obtaining approval from Congress, it is far better for them to use military force on suspect authority and come later to Congress to explain what they did, why they acted, and request Congress to provide

[10] David S. Friedman, "Waging War Against Checks and Balances—The Claim of an Unlimited Presidential War Power," *St. John's Law Review* 57 (Winter 1983): 228.

[11] Peter Raven-Hansen, ed., *First Use of Nuclear Weapons: Under the Constitution, Who Decides?* (New York: Greenwood Press, 1987); Allan Ides, "Congressional Authority to Regulate the Use of Nuclear Weapons," *Hastings Constitutional Law Quarterly* 13 (Winter 1986): 233; Jeremy J. Stone, "Presidential First Use is Unlawful," *Foreign Policy* 56 (Fall 1984): 94.

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retroactive authorization. The burden is wholly on the president to make the case. Congress is the only branch that can confer legitimacy on an emergency measure. That is the procedure Abraham Lincoln used in the Civil War. It is the model for all presidents. Congress should not attempt to provide advance authority for every type of emergency action. Having been burned on the Tonkin Gulf Resolution, the Senate Foreign Relations Committee concluded in 1969:

> Finally, should the president find himself confronted with a situation of such complexity and ambiguity as to leave him without guidelines for constitutional action, it would be far better for him to take the action he saw fit without attempting to justify it in advance and leave it to Congress or the courts to evaluate his action in retrospect. A single unconstitutional act, later explained or pronounced unconstitutional, is preferable to an act dressed up in some spurious, precedent-setting claim of legitimacy.[12]

The concept of defensive war has expanded in recent decades beyond any definition familiar to the Framers. During the nineteenth century, defensive war was confined to protective action along the borders of the United States and on ships at sea. Twentieth-century notions of defensive war are far more ambitious. As a result of World War II, American military bases are now dispersed around the globe. By 1966, Leonard C. Meeker, the legal adviser to the State Department, could offer this generous concept of presidential power:

> In 1787 the world was a far larger place, and the Framers probably had in mind attacks upon the United States. In the 20th century, the world has grown much smaller. An attack on a country far from our shores can impinge directly on the nation's security. In the SEATO treaty, for example, it is formally declared that an armed attack against Viet-Nam would endanger the peace and safety of the United States.[13]

That statement distorts the significance of SEATO (Southeast Asia Treaty Organization) and other mutual security pacts. Each nation, in accordance with its "constitutional processes," decides for itself the appropriate response. Nothing in those pacts defines constitutional processes to mean whatever the president wants to do. The Senate, in agreeing to those treaties, did not abandon its constitutional responsibilities or attempt to deny to the House of Representatives its constitutional role in authorizing war. A shrinking globe is no reason to shrink congressional power.

[12] S. Rept. No. 129, 91st Cong., 1st sess. (1969), 32.
[13] *Department of State Bulletin*, 54 (1966): 484.

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Defenders of presidential war power point to more than two hundred instances in which presidents have used military force without an authorization from Congress. Those actions were minor adventures done in the name of protecting American lives or property, taken at a time when U.S. intervention in neighboring countries was considered routine and proper. Today, such invasions violate international law and regional treaties. Is the bombardment of Greytown, Nicaragua, in 1854 an acceptable precedent for the current use of American military power? Are we comfortable with citing America's occupation of Haiti from 1915 to 1934 or the repeated interventions in Nicaragua from 1909 to 1933? We should not speak nonchalantly about more than 200 precedents, assuming that such numbers, by themselves, justify unilateral military action by the president. We need to examine the specific incidents. Are they attractive precedents for the use of force today? None of the 200 incidents comes close to justifying military actions of the magnitude and risk of Korea in 1950, Panama in 1989, Iraq in 1990-1991, or Bosnia and Haiti in 1994.

It has been proposed that the War Powers Resolution be replaced by a Use of Force Act, which would delegate to the president a number of authorities, including the right "to protect and extricate citizens and nationals of the United States located abroad in situations involving a direct and imminent threat to their lives, provided they are being evacuated as rapidly as possible."[14] Such language could have been used to justify the U.S. invasions of the Dominican Republic, Grenada, and Panama. Americans abroad are threatened every year. Concern about using military force improperly to protect Americans abroad led to legislation in 1868, still in effect, directing the president to take all *diplomatic* steps necessary to free American citizens. Presidential initiatives must be those "not amounting to acts of war."[15]

As another justification for executive power, Presidents Truman, Bush, and Clinton have told the American public that mutual defense treaties (like NATO) and resolutions passed by the UN Security Council provide sufficient legal support for presidential military actions. There is no basis for these claims. Treaties entered into by the president and the Senate – whether for NATO or the UN Charter – cannot strip from the House of Representatives its constitutional duties over military commitments.

[14] Joseph R. Biden, Jr., and John B. Ritch, III, "The War Power at a Constitutional Impasse: A 'Joint Decision' Solution," *Georgetown Law Journal* 77 (December 1988): 398.

[15] 15 Stat. 223 (1868); 22 U.S.C. 1732 (1988).

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The claim by the executive branch that President Bush was justified in invading Panama to stop drug trafficking is facially ludicrous. Under that theory, the United States would have a right to intervene militarily in South America, Mexico, Turkey, the Golden Triangle, and other regions of the world. Such arguments fail the straight-face test.

President Bush invaded Panama because he and his advisers concluded that Panama was too weak and isolated to resist American force. His action parallels President Woodrow Wilson's invasion of Veracruz in 1914. At that time Felix Frankfurter was a young attorney working in the War Department. Enoch H. Crowder, the judge advocate general, asked for his advice after the White House requested a memorandum on whether Wilson's action should be treated as an act of war. Frankfurter had this conversation:

> General, I'm going to ask to be excused. I don't have to work on that. I know the answer to that.
>
> You do?
>
> Yes, I do.
>
> What is the answer?
>
> It would be an act of war against a great nation; it isn't against a small nation.
>
> I can't give him that.
>
> I know you can't but that's the answer.[16]

Frankfurter's analysis has a cynical edge, but it captures a recurring flavor of U.S. foreign policy. American troops have been used repeatedly against small nations over incidents that would have been considered too minor to justify the use of force against larger powers. Targets of American military power are typically weak and isolated nations, including Cambodia, Libya, Grenada, Panama, Iraq, and Haiti.

JACKSON'S ZONE OF TWILIGHT

In his concurring opinion in the Steel Seizure Case in 1952, Justice Robert H. Jackson identified three scenarios for presidential power. When the president acts pursuant to an express or implied authorization of Congress, his authority "is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate."

[16] Harlan B. Phillips, ed., *Felix Frankfurter Reminisces* (New York: Reynal & Co., 1960), 60.

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The president's power is "at its lowest ebb" when he takes measures incompatible with the expressed or implied will of Congress, for then he relies only upon his own constitutional powers minus any constitutional powers possessed by Congress.[17] Jackson's third scenario, in which Congress neither grants nor denies power, is of special interest:

> When the president acts in absence of either a congressional grant or denial of authority, he can rely upon his own independent powers, but there is a zone of twilight in which he and Congress may have concurrent authority, or in which its distribution is uncertain. Therefore, congressional inertia, indifference or quiescence may sometimes, at least as a practical matter, enable, if not invite, measures on independent presidential responsibility. In this area, any actual test of power is likely to depend on the imperatives of events and contemporary imponderables rather than on abstract theories of law.[18]

In this same case, Justice Felix Frankfurter also explored the impact of custom and practice on presidential power. Legislative and executive power were not defined purely on the basis of textual grants. The behavior of each branch added meaning to constitutional power:

> Deeply embedded traditional ways of conducting government cannot supplant the Constitution or legislation, but they give meaning to the words of a text or supply them. It is an inadmissibly narrow conception of American constitutional law to confine it to the words of the Constitution and to disregard the gloss which life has written upon them. In short, a systematic, unbroken, executive practice, long pursued to the knowledge of the Congress and never before questioned, engaged in by presidents who have also sworn to uphold the Constitution, making as it were such exercise of power part of the structure of our government, may be treated as a gloss on "executive Power" vested in the president by §1 of Art. II.[19]

These observations by Jackson and Frankfurter seem innocent enough: custom helps shape the Constitution. However, they also give some encouragement to presidential raids of power, done with the knowledge that the additional power seized will be successful and permanent unless Congress effectively defends itself. Jackson and Frankfurter provide an incentive for aggression similar to disputes between nations. When one nation expands its territory by violating surrounding borders, the burden is placed on neighboring countries to resist.

[17] *Youngstown Co.* v. *Sawyer*, 343 U.S. 579, 635–37 (1952).
[18] Ibid., 637.
[19] Ibid., 610–11.

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To a certain extent, this dynamic describes our constitutional system. If one branch encroaches, the branch under attack must respond. It must fight back out of a sense of institutional survival. However, in recognizing these struggles as part of our system of checks and balances, legitimacy should not be conferred on illegitimate actions. Illegal and unconstitutional actions, no matter how often repeated, do not build a lawful foundation. If presidents withdrew funds from the Treasury without an appropriation from Congress, those actions would have no constitutional legitimacy regardless of the number of infractions. As Gerhard Casper has remarked: "unconstitutional practices cannot become legitimate by the mere lapse of time."[20] Justice Frankfurter noted: "Illegality cannot attain legitimacy through practice."[21] Presidential acts of war can never be accepted as constitutional or as a legal substitute for congressional approval.

Revisiting the War Powers Resolution

Critics of the War Powers Resolution argue that it has failed to work as planned and encroaches upon the constitutional powers of the president. No doubt it does not function as planned. To repeal it, however, would send the wrong signal: a green light to presidential adventurism unchecked by the legislative branch. The core concept of the War Powers Resolution is sound. The decision to commit U.S. troops to hostilities should be a matter for "collective judgment" entered into by both branches. Only after Congress authorizes military action, reaching that decision through parliamentary deliberations, may the president as commander in chief order troops into combat. That principle was well-grounded in 1787. It remains so today.

Does the War Powers Resolution trench upon presidential authority? No one has identified a military initiative, desired by the president after 1973, that has been canceled or restricted because of this legislation. Where else did presidents want to intervene? The historical record is silent. Presidents have done what they wanted to do, notwithstanding the War Powers Resolution. Their actions have been hurried in some instances (as in Grenada) and restricted in others (El Salvador).[22] If

[20] Gerhard Casper, "Constitutional Constraints on the Conduct of Foreign and Defense Policy: A Nonjudicial Model," *University of Chicago Law Review* 43 (Spring 1976): 479.

[21] *Inland Waterways Corp. v. Young*, 309 U.S. 517, 524 (1940).

[22] Ellen C. Collier, "Statutory Constraints: The War Powers Resolution" in Gary M. Stern and Morton H. Halperin, eds., *The Constitution and the Power to Go to War* (Westport, CT: Greenwood Press, 1994), 65–66.

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anything, the resolution recognizes too much latitude for presidential war power. An expansive reading implies that the president may use military force unilaterally for up to sixty days: anywhere, any time, for any reason. The Framers would never have allowed that kind of open-ended discretion.

If the War Powers Resolution is revised, there is good reason to shorten or eliminate the sixty-day period. A grace period of two months allows such operations as the invasion of Grenada and of Panama, conducted without any congressional support or involvement. John Hart Ely recommends that the period be reduced to twenty days.[23] Restricting the scope of presidential latitude is wise (as well as constitutional) but even twenty days (or ten) exceeds the constitutional plan. Presidents need some emergency authority, as in evacuating Americans and foreign nationals from Vietnam, but not to the extent of invading other countries.

Congressional (and public) control would be greatly strengthened if tied to the power of the purse. A revised War Powers Resolution could prohibit the president from obligating or spending any funds to initiate military action unless Congress passes legislation appropriating funds. Such language would give the president some latitude in responding to an emergency, subject to the condition that Congress must provide funds and authority for military conflicts. The burden would be on the president, as it should be, to seek congressional authority.[24]

As another option, Congress could pass a concurrent resolution disapproving of a presidential war, automatically triggering a point of order against any measure that contains funds to perpetuate the conflict. Operating as an internal mechanism (one part of Congress controlling another part), no constitutional objection can be raised that the concurrent resolution is a "legislative veto" prohibited by *INS v. Chadha*.[25] The legislative veto applies to congressional efforts to control the executive branch, not its own internal proceedings.

The consultation provision of the War Powers Resolution could be improved. Consultation is something more than getting in touch with

[23] John Hart Ely, *War and Responsibility* (Princeton, NJ: Princeton University Press, 1993), 120, 127–28, 136.

[24] Michael J. Glennon, "Strengthening the War Powers Resolution: The Case for Purse-Strings Restrictions," *Minnesota Law Review* 60 (November 1975): 32; Cyrus R. Vance, "Striking the Balance: Congress and the President Under the War Powers Resolution," *University of Pennsylvania Law Review* 133 (December 1984): 93–94; Ely, *War and Responsibility*, 121.

[25] Louis Fisher, "The Legislative Veto: Invalidated, It Survives," *Law & Contemporary Problems* 56 (Autumn 1993): 283–84.

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legislators after the executive branch decides on a course of action. The process of consultation means talking to Congress when a policy is still open to change. As pointed out by the legislative history of the War Powers Resolution, consultation means that "a decision is pending on a problem and that members of Congress are being asked by the president for their advice and opinions and, in appropriate circumstances, their approval of action contemplated."[26] That understanding should be made explicit in law.

A second issue of consultation concerns the number of members of Congress that the president should contact. Obviously, the War Powers Resolution does not require the president to consult 535 legislators. Even for smaller numbers, presidents complain about the impracticality of the consultation provision. President Ford said that during the evacuation of Vietnam in 1975, the leaders of Congress were spread around the world during an Easter recess. Two were in Mexico, three in Greece, one in the Middle East, another in Europe, two in the People's Republic of China, and the rest found in twelve widely scattered states of the Union.[27] A year later, when he began the first evacuation of American citizens from Lebanon, Congress had adjourned for the day and he discovered that one member of Congress had an unlisted telephone number that his press secretary refused to divulge. Ford even had the local police leave a note on another legislator's beach cottage door, instructing: "Please call the White House."[28] Ford exaggerated the problem. The record shows that presidents can reach legislators when they want to. When presidents need members of Congress to vote on an administration bill, they usually have no difficulty in locating them and even arranging for a quick flight back to Washington, D.C.

There is some merit in creating a congressional consultative group, consisting of perhaps eighteen members: Speaker of the House, House majority leader, House minority leader, president pro tempore of the Senate, Senate majority leader, Senate minority leader, and the chairman and ranking members of six committees: Senate Foreign Relations, House Foreign Affairs, the Senate and House Armed Services Committee, and the Senate and House Intelligence Committees.[29] This core

[26] H. Rept. No. 287, 93d Cong., 1st sess. (1973), 6–7.

[27] Gerald R. Ford, "Congress, the Presidency and National Security Policy," *Presidential Studies Quarterly* 16 (Spring 1986): 202.

[28] Ibid.

[29] Biden and Ritch, "The War Power at a Constitutional Impasse: A 'Joint Decision' Solution," 402–03.

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group of eighteen should be expanded, depending on the issue, to include other members of Congress who have special expertise and experience. However, consultation is not a legal substitute for full congressional action. Congress cannot delegate to a subunit the constitutional decision to go to war. A House bill providing for a consultative group explains that consultations "shall not be construed as a grant of authority from the Congress to the president to conduct such military action."[30]

A Forbidden Legislative Veto?

Some critics of the War Powers Resolution argue that the concurrent resolution is unconstitutional. In 1975, the legal adviser to the State Department told a House committee that if the president has the power to put men into combat, "that power could not be taken away by concurrent resolution because the power is constitutional in nature."[31] The Justice Department reached the same conclusion in 1980.[32] Those positions appeared to be strengthened in 1983 when the Supreme Court, in *INS v. Chadha*, struck down the legislative veto as unconstitutional. The Court ruled that whenever Congress wants to alter the legal rights, duties, or relations outside the legislative branch, it must act by both Houses in a bill or joint resolution that is presented to the president for his signature or veto.[33] Concurrent resolutions are adopted by both Houses but are not presented to the president.

In response to *Chadha*, an amendment was offered to make the procedure of the War Power Resolution conform to the Court's decision. Instead of acting by concurrent resolution, Congress would pass a joint resolution or bill and present that to the president. As enacted, however, this amendment did not alter the War Powers Resolution. The amendment became a freestanding procedure available to Congress to act by joint resolution to require the president to withdraw troops.[34] The concurrent resolution remains in the War Powers Resolution.

During hearings in 1988, the legal adviser to the State Department testified that the concurrent resolution in the War Powers Resolution

[30] H.R. 3405, 103d Cong., 1st sess., 28 October 1993, §2.

[31] "War Powers: A Test of Compliance," hearings before the House Committee on International Relations, 94th Cong., 1st sess. (1975), 91.

[32] *Opinions of Office of Legal Counsel*, 4A (1980), 197.

[33] 462 U.S. 919 (1983).

[34] 97 Stat. 1062-63, §1013 (1983); 50 U.S.C. 1546a (1988). See 129 Cong. Rec. 28406-08, 28673-74, 28683-84, 28686-89, 33385, 33395-96 (1983).

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was "clearly" unconstitutional and should be repealed.[35] In a committee report in 1987, the Senate Foreign Relations Committee also stated that the concurrent resolution in the War Powers Resolution "has been effectively nullified" by *Chadha*.[36]

Replacing the concurrent resolution in the War Powers Resolution with a joint resolution is both unnecessary and undesirable. As used by the Supreme Court in *Chadha*, the term "legislative veto" should be restricted to the following meaning: a condition placed on delegated authority, such as the one-House legislative veto that accompanied the delegation of reorganization power to the president, or the two-House veto attached to rulemaking authority for the Federal Trade Commission. The War Powers Resolution does not delegate legislative authority to the president. No legislative veto exists as a condition on that authority. Section 8(d)(2) expressly states that nothing in the War Powers Resolution "shall be construed as granting any authority to the president with respect to the introduction of United States Armed Forces into hostilities or into situations wherein involvement in hostilities is clearly indicated by the circumstances which authority he would not have had in the absence of this joint resolution."

The constitutional disadvantage of acting by joint resolution is profound. If Congress passed a joint resolution ordering the president to withdraw troops and the president exercised his veto, Congress would need a two-thirds majority in each House to override the veto. In other words, the president could continue to prosecute a war he started even if a majority in each House is opposed. He would simply need one-third plus one in a single House to prevent the override. It does violence to the Constitution to place that burden on Congress.

The issue can be more clearly understood by reviewing the specific situation in 1973 when Congress tried to use its power of the purse to end the war in Vietnam. President Richard Nixon vetoed a bill directing that no appropriated funds could be used to support combat activities in Cambodia or Laos. Congress, unable to override the veto, agreed to give Nixon forty-five additional days to bomb Cambodia. Congresswoman Elizabeth Holtzman filed a suit asking a federal court to determine that the president could not engage in combat operations in Southeast Asia without express authorization from Congress. Judge

[35] "The War Power after 200 Years," hearings before the Senate Committee on Foreign Relations, 100th Cong., 2d sess. (1988), 1061.

[36] S. Rept. No. 106, 100th Cong., 1st sess. (1987), 6.

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Orrin G. Judd ruled that Congress had not authorized the bombing in Cambodia and that its inability to override the veto could not be interpreted as an affirmative grant of authority. Said Judd: "It cannot be the rule that the president needs a vote of only one-third plus one of either House in order to conduct a war, but this would be the consequence of holding that Congress must override a presidential veto in order to terminate hostilities which it has not authorized."[37] His order was stayed and eventually reversed because Congress had entered into the compromise with Nixon.[38]

The concurrent resolution remains a useful and appropriate means for expressing congressional policy. If Congress passed such a resolution, the president might well argue that it was legally null and void because of *Chadha*. How would that fare politically? Would a president keep troops in hostilities after a majority in each House told him to bring the soldiers home? A majority vote should suffice, especially to rein in a war initiated by the president. Congress should not have to regain control by securing a two-thirds majority in both Houses.[39]

Even critics of the War Powers Resolution seem to concede that Congress does not need a two-thirds majority in each House to stop a presidential war. After leaving the White House, Gerald R. Ford said that it was the Framers' intention that a president "could not initiate a war without the approval of both houses of Congress."[40] If a president needs the support of both Houses in advance, that means that either House can disapprove and leave the president with no authority. In essence, the Framers anticipated a one-House veto over the war power. Robert F. Turner, another critic of the War Powers Resolution, concludes that the concurrent resolution is invalid under *Chadha*.[41] Yet Turner also states that the Constitution, as intended by the Framers, gives Congress a one-House veto over presidential wars. One of the checks "incorporated to protect against executive

[37] *Holtzman v. Schlesinger*, 361 F.Supp. 553, 565 (E.D. N.Y. 1973).

[38] *Holtzman v. Schlesinger*, 414 U.S. 1304, 1316, 1321 (1973); *Holtzman v. Schlesinger*, 484 F.2d 1307 (2d Cir. 1973), cert. denied, 416 U.S. 936 (1974).

[39] For those who support the constitutionality of the concurrent resolution in the War Powers Resolution, see Ely, *War and Responsibility*, 119–20; G. Sidney Buchanan, "In Defense of the War Powers Resolution: *Chadha* Does Not Apply," *Houston Law Review* 22 (October 1985): 1155; Vance, "Striking the Balance: Congress and the President Under the War Powers Resolution," 86–87; and Casper, "Constitutional Constraints on the Conduct of Foreign and Defense Policy: A Nonjudicial Model," 484–85.

[40] Foreword to Robert F. Turner, *Repealing the War Powers Resolution: Restoring the Rule of Law in U.S. Foreign Policy* (McLean, VA: Brassey's (US), Inc., 1991), vii.

[41] Ibid., 116–18.

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abuse [is] the power of either house of Congress to veto a decision to initiate a war."[42] That is the correct principle; a two-thirds majority in each House is constitutionally excessive.

In vetoing the War Powers Resolution, President Nixon objected that the procedure for a sixty or ninety day limit meant that Congress did not have to vote. It could control by inaction: "No overt Congressional action would be required to cut off these powers—they would disappear automatically unless the Congress extended them. In effect, the Congress is here attempting to increase its policy-making role through a provision which requires it to take absolutely no action at all."[43] There is nothing unusual or unconstitutional about Congress controlling the president through inaction. If Congress doesn't want to vote funds or authority for something the president wants, there is no obligation to act. A failure by the president to persuade Congress that the proposal has merit means that it dies. Congress need not even report the proposal out of committee. Such are the hazards of the legislative process—perhaps unfortunate for the president, but fully constitutional.

Compelling Court Action

In recent decades, federal courts have consistently refused to reach the merits in war power cases. Throughout the Vietnam period, such cases were regarded as political questions to be resolved by the elected branches.[44] By the time of the Reagan and Bush years, federal judges offered other reasons to avoid a decision: the issue was moot,[45] it was not ripe,[46] plaintiffs lacked standing,[47] a variety of doctrines on judicial prudence and "equitable discretion,"[48] and a finding of nonjusticia-

[42] Ibid., xiv.

[43] *Public Papers of the Presidents*, 1973, 894.

[44] See *Luftig v. McNamara*, 373 F.2d 664 (D.C. Cir. 1967); *Velvel v. Johnson*, 287 F.Supp. 846 (D. Kans. 1968); *Berk v. Laird*, 317 F.Supp. 715 (E.D. N.Y. 1970); *Orlando v. Laird*, 443 F.2d 1039 (2d Cir. 1971); *Atlee v. Laird*, 347 F.Supp. 689 (E.D. Pa. 1972); *Gravel v. Laird*, 347 F.Supp. 7 (D.D.C. 1972); *DaCosta v. Laird*, 471 F.2d 1146 (2d Cir. 1973); *Mitchell v. Laird*, 488 F.2d 611 (D.D.C. 1973).

[45] *Conyers v. Reagan*, 765 F.2d 1124 (D.C. Cir. 1985).

[46] *Dellums v. Bush*, 752 F.Supp. 1141, 1149–52 (D.D.C. 1990); *Ange v. Bush*, 752 F.Supp. 509, 515–17 (D.D.C.1990).

[47] *Dornan v. U.S. Secretary of Defense*, 851 F.2d 450 (D.C. Cir. 1988).

[48] *Lowry v. Reagan*, 676 F.Supp. 333, 337–39 (D.D.C. 1987); *Conyers v. Reagan*, 578 F.Supp. 324 (D.D.C. 1984).

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bility because judicial resolution would require fact finding better done by Congress.[49]

Several proposals would try to force a judicial decision. One recommendation would authorize any member of Congress to bring an action in federal court for declaratory judgment and injunctive relief on the grounds that the president had violated statutory policy.[50] In such actions, courts "shall not decline to make a determination on the merits based upon the doctrine of political question, remedial discretion, equitable discretion, or any other finding of nonjusticiability, unless such declination is required by Article III of the Constitution."[51] Another variation of the court-forcing idea would give members of Congress standing to go to court whenever the president fails to start the clock by reporting under Section 4(a)(1). Under this proposal, judges could not invoke standing, political question, ripeness, or any other threshold to avoid deciding the matter.[52]

Federal courts have decided many cases involving foreign affairs and the war power. Depending on the circumstances, they can help clarify constitutional issues and monitor the relationships between Congress and the president. But efforts to compel judges to decide cases are unwise and unconstitutional. Most of the thresholds used by courts to avoid a decision (standing, mootness, ripeness, and so forth) are derived from the case-or-controversy test in Article III.[53] Judges must decide what is a case or controversy. Congress cannot compel them to decide a case, especially when it is not in their institutional interest to act. For any number of sound reasons (including lack of judicial competence), judges may properly conclude that disputes over the war power are best left to the elected branches.

As noted by Harold Koh, statutes cannot require federal judges to "surrender their discretion to dismiss those suits in which concerns about separation of powers proved particularly intense, for example, suits brought by constitutionally inappropriate plaintiffs."[54] Even for

[49] *Crockett v. Reagan*, 558 F.Supp. 893, 898 (D.D.C. 1982); *Sanchez-Espinoza v. Reagan*, 568 F.Supp. 596, 600 (D.D.C. 1983).

[50] Biden and Ritch, "The War Power at a Constitutional Impasse: A 'Joint Decision' Solution," 409.

[51] Ibid., 410.

[52] Ely, *War and Responsibility*, 60–63, 125, 135.

[53] Louis Fisher, *American Constitutional Law* (New York: McGraw-Hill, 2d ed., 1995), 97–98, 104, 126, 130.

[54] Harold Hongju Koh, *The National Security Constitution: Sharing Power After the Iran-Contra Affair* (New Haven: Yale University Press, 1990), 223.

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techniques of judicial abstention that supposedly lack an Article III basis, such as prudential consideration and equitable discretion, a judge's decision not to decide is rooted in an institutional judgment that abstention is necessary for the continued independence and health of the courts.

Furthermore, members of Congress (and the president) should not press for a judicial decision unless they know what it will be, and they cannot know that ahead of time. It is standard courtroom practice for attorneys not to ask a question of a witness unless they know that the answer will assist their case. Federal courts have generally expanded, not restricted, presidential power. If courts in a particular case decide that the president acted properly in initiating military action without first seeking congressional authority, the cause of Congress (and the Constitution) would be gravely compromised. It would now face not one branch, acting on suspect authority, but two branches agreed on the use of force.

The Framers' basic theory, guiding us for two centuries, is that "ambition must be made to counteract ambition."[55] Each branch must protect its own territory. Congress cannot go to the courts, hat in hand, asking judges to do what legislators are fully capable of doing: check the president. Congress should not entrust to the judiciary the duty of protecting legislative prerogatives. As Justice Jackson said in the Steel Seizure Case, "only Congress itself can prevent power from slipping through its fingers."[56]

Statutory Restrictions

Instead of relying on unpredictable court decisions, Congress must learn to invoke the powerful weapons at its command. Through its prerogative to authorize programs and appropriate funds, it can define and limit presidential power. In domestic as well as in foreign affairs, Congress can withhold all or part of an appropriation and may attach riders to appropriations measures to proscribe certain actions.[57]

Some claim that the power of the purse is ineffective in restraining presidential wars. Senator Jacob Javits said that Congress "can hardly

[55] James Madison, *The Federalist*, No. 51 in Benjamin Fletcher Wright, ed., *The Federalist* (Cambridge, MA: Harvard University Press, 1961), 356.

[56] *Youngstown Co. v. Sawyer*, 343 U.S. at 654.

[57] Eli E. Nobleman, "Financial Aspects of Congressional Participation in Foreign Relations," *The Annals* 289 (1953): 145; Louis Fisher, "How Tightly Can Congress Draw the Purse Strings?" *American Journal of International Law* 83 (October 1989): 758.

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cut off appropriations when 500,000 American troops are fighting for their lives, as in Vietnam."[58] The short answer is that Congress can and has used the power of the purse to restrict presidential war power. If members of Congress are worried about American troops fighting for their lives in a futile war, those lives are not protected by voting for continued funding. The proper and responsible action is to terminate appropriations and bring the troops home. Members need to make that case to their constituents. It can be done.

The Supreme Court has held that the president as commander in chief "is authorized to direct the movements of the naval and military forces placed by law at his command, and to employ them in the manner he may deem most effectual to harass and conquer and subdue the enemy."[59] The power to move forces "placed *by law*" at his command implies that Congress can, by statute, control the scope of the commander-in-chief powers. Many such restrictions have been enacted. Following are some contemporary examples.

In 1973, Congress used the power of the purse to end the war in Vietnam. Three years later it passed legislation prohibiting the CIA from operating in Angola other than to gather intelligence. Legislation also prohibited the Agency from conducting military or paramilitary operations in Angola and denied any appropriated funds to finance directly or indirectly any type of military assistance to Angola.[60]

In 1984, Congress adopted the Boland Amendment to prohibit assistance of any kind by the Reagan administration to support the contras in Nicaragua. The all-embracing language read: "During fiscal year 1985, no funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities may be obligated or expended for the purpose or which would have the effect of supporting, directly or indirectly, military or paramilitary operations in Nicaragua by any nation, group, organization, movement, or individual."[61] No constitutional objection to this provision was ever voiced publicly by President Reagan, the White House, the Justice Department, or any other agency of the executive branch.

[58] Jacob K. Javits, "The War Powers Resolution and the Constitution: A Special Introduction" in Demetrios Caraley, ed., *The President's War Powers: From the Federalists to Reagan* (New York: Academy of Political Science, 1984), 3.

[59] *Fleming v. Page*, 50 U.S. (9 How.) 602, 614 (1850).

[60] 90 Stat. 166 (1976); 90 Stat. 757, §404 (1976); 90 Stat. 776, §109 (1976).

[61] 98 Stat. 1935, §8066(a) (1984).

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Two years later, Congress restricted the president's military role in Central America by stipulating that U.S. personnel "may not provide any training or other service, or otherwise participate directly or indirectly in the provision of any assistance, to the Nicaraguan democratic resistance pursuant to this title within those land areas of Honduras and Costa Rica which are within 20 miles of the border with Nicaragua."[62] The statute defined U.S. personnel to mean "any member of the United States Armed Forces who is on active duty or is performing inactive duty training" and any employee of any department, agency, or other component of the executive branch.[63] The clear purpose was to prevent military activities in Honduras and Costa Rica from spilling over into Nicaragua. The Reagan administration never offered any constitutional objections to this statutory restriction.

Also in 1986, Congress passed this prohibition on placing U.S. personnel in Nicaragua: "no member of the United States Armed Forces or employee of any department, agency, or other component of the United States Government may enter Nicaragua to provide military advice, training, or logistical support to paramilitary groups operating inside that country. Nothing in this title shall be construed as authorizing any member or unit of the Armed Forces of the United States to engage in combat against the Government of Nicaragua."[64]

In 1991, when Congress authorized President Bush to use military force action against Iraq, the authority was explicitly linked to UN Security Council Resolution 678, which was adopted to expel Iraq from Kuwait.[65] Thus, the legislation did not authorize any wider action, such as using U.S. forces to invade and occupy Iraq. In 1993, Congress established a deadline for troops to leave Somalia. No funds could be used for military action after 31 March 1994, unless the president requested an extension from Congress and received legislative authority.[66]

Thinking National Interest

It is in the nature of the White House that presidents will be surrounded by aides who advocate heavy reliance on executive powers and inherent authority, thus eliminating the need to build congressional support.

[62] 100 Stat. 3341-307, §216(a) (1986).
[63] Ibid., §216(b).
[64] 100 Stat. 1783-298, §203(e) (1986).
[65] 105 Stat. 3 (1991).
[66] 107 Stat. 1476, §8151(b)(2)(B) (1993).

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Watergate and Iran-contra teach us that executive officials have great capacity for self-inflicted injuries. The loyalty of political appointees to the president gives them little stake in the long-term operations of government. Quick to bridle at the frustrations of orderly, constitutional procedures, executive officials circumvent laws with interpretations they regard as clever.

Political appointees are often willing to initiate actions that come at great cost to Congress, the president, and the political system. Eager for results and ignorant of constitutional processes, they seek immediate action regardless of long-term damage. By the time the offense is uncovered they are likely to be back in the private sector. Contemptuous of government, they make government contemptible by their conduct. The task of cleaning up the debris is then left to careerists and professionals in Congress and the executive branch. They have done it before and can do it again, but the political system is inevitably poisoned. Afterward there is less good faith, trust, and confidence between the branches—qualities indispensable in a government of divided powers, general grants of constitutional authority, and broadly drawn statutes that demand sound judgment from administrators.

Power has been shifting from career executives to short-term political appointees. The latter are more loyal to the president than to the federal policies that Congress enacts into law, and they have less of a stake in healthy executive-legislative relations. Political appointees "have enough time to make mistakes, but not enough time to learn from them."[67] Increased numbers of political appointees pose serious risks: a layer of inexperienced policy makers subject to frequent turnover, the exclusion of many career professionals from agency deliberations, and greater administrative instability and incompetence. The result is that Congress enacts legislation but has less confidence that laws will be carried out faithfully.

In its report released in 1989, the Volcker Commission studied the relationship between political appointees and career executives and recommended that the number of political appointees be reduced by about one-third.[68] Unfortunately, that proposal was not adopted and

[67] James P. Pfiffner, "Political Appointees and Career Executives: The Democracy-Bureaucracy Nexus in the Third Century," *Public Administration Review* 47 (January/February 1987): 63. See also Patricia W. Ingraham, "Building Bridges or Burning Them? The President, the Appointees, and the Bureaucracy," *Public Administration Review* 47 (September/October 1987): 425.

[68] Task Force Reports to the National Commission on the Public Service, *Leadership in America: Rebuilding the Public Service* (Washington, DC: U.S. Government Printing Office, 1989), 158–90.

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the reforms pushed by the Clinton administration, particularly the National Performance Review (the Gore Report on "reinventing government"), will make the ratio worse. Careerists will be reduced by about 252,000 over five years without any decrease in political appointees. Congress later increased the personnel cut to 272,900.

This climate will tempt short-term political appointees to augment presidential war power and ignore congressional controls. Democrats eager to support president Clinton as commander in chief, pressing those powers to the limit, should review earlier experiences with that strategy. President Wilson's entry into World War I cost the Democrats control of Congress in the 1918 elections and the loss of the White House in 1920. Truman's war in Korea resulted in the election of Dwight Eisenhower, ending twenty years of Democratic control of the White House. Lyndon Johnson's entanglement in Vietnam set the stage for Richard Nixon's victory in 1968. This is not a winning pattern.

Republicans, especially those with monarchical leanings, should also reflect on the costs to their party when presidential war power is unchecked. Eisenhower understood the need to share the war power with Congress. He served for two full terms. Under Richard Nixon, exaggerated notions of national security and a refusal to recognize congressional prerogatives led to Watergate and Nixon's resignation. The Iran-contra fiasco discredited the Reagan administration and the Republicans' traditional claim that they can manage the executive branch. President Reagan said he did not know what was being done within his own National Security Council. Even George Bush's popular actions in Panama and Iraq yielded no benefits for his reelection effort in 1992. Activists in both parties need to rethink the merits of presidential wars.

For its part, Congress needs to rediscover its institutional and constitutional duties. Legislators must be prepared and willing to use the ample powers at their disposal. Too often members make careless remarks that the president "makes foreign policy," is "preeminent" in foreign affairs, and that as commander in chief he may send troops wherever he likes. During hearings in 1983 on covert operations, the chairman of the House Intelligence Committee, Edward P. Boland, remarked: "We do not meet today to dispute the President's pre-eminence in foreign affairs."[69] Such comments undermine constitutional checks and feed executive arrogance. Even the most cursory glance

[69] "Congressional Oversight of Covert Activities," hearings before the House Permanent Select Committee on Intelligence, 98th Cong., 1st sess. (1983), 1.

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at the Constitution and American history demonstrates the solid base of congressional responsibilities in foreign policy and the war power.

Much of the imbalance between executive and legislative power lies in the disparate defense measures available to the president and to Congress. Presidents and their assistants are quick to react to congressional initiatives they see as invasive. The Justice Department, the White House, and other centers of the executive branch are ready to challenge and fight off legislative actions. That is as it should be. Congressional leaders, on the other hand, are often at cross purposes: partly inclined to protect their institution but just as disposed to defend the president's powers and interests. That is especially so when congressional leaders are of the same party as the president; but this pattern is evident even when the president is from the opposite party. Thus, the executive branch has a defense mechanism that is fairly central and unified, while Congress is decentralized and divided in purpose. This is a major institutional deficiency for Congress, and legislative leaders (as well as the rank and file) need to be sensitive about this imbalance. For all that is written about the Imperial Congress with its penchant for micromanagement, there is too great a temptation on the part of Congress to let down its guard and fail to defend its prerogatives.

The post-Vietnam years offer many constructive lessons on the need for presidents to reach an accommodation with Congress in foreign policy and national defense. Unilateral executive claims of military power are counterproductive for Congress, the president, and the country. To sustain a successful policy, the executive branch needs the support and cooperation of Congress. After championing executive power for years, in 1975 Secretary of State Henry Kissinger observed:

> Comity between the executive and legislative branches is the only possible basis for national action. The decade-long struggle in this country over executive dominance in foreign affairs is over. The recognition that the Congress is a coequal branch of government is the dominant fact of national politics today. The executive accepts that the Congress must have both the sense and the reality of participation: foreign policy must be a shared enterprise.[70]

Members of Congress need to participate in the daily grind of overseeing administration policies, passing judgment on them, and behaving as a coequal, independent branch. When presidents overstep constitutional barriers or threaten to do so, Congress must respond

[70] *Department of State Bulletin*, 73 (1975): 562.

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with solid statutory checks, not floor speeches and sense of Congress resolutions. Action by statute is needed to safeguard the legislative institution, maintain a vigorous system of checks and balances, and fulfill the role of Congress as the people's representatives. Members do more than represent districts and states; they represent popular control. Citizens entrust to Congress the safekeeping of their powers, especially over matters of war and peace. Legislators act as custodians of the people. If they neglect that function, citizens, scholars, and interest groups must apply constant pressure on Congress to discharge the constitutional duties assigned to it.

Congress may stand against the president or stand behind him, but it should not stand aside as it did year after year during the Vietnam War, looking the other way and occasionally complaining about executive usurpation. Members have to participate actively in questions of national policy, challenging presidents and contesting their actions. Military issues need the thorough exploration and ventilation that only Congress can provide.

Justice Robert H. Jackson, whose entire career with the federal government lay outside the legislative branch, serving first as attorney general and later as associate justice of the Supreme Court, urged us to hold fast to essentials: "With all its defects, delays and inconveniences, men have discovered no technique for long preserving free government except that the Executive be under the law, and that the law be made by parliamentary deliberations."[71]*

[71] *Youngstown Co. v. Sawyer*, 343 U.S. at 655.

* This article is based on the author's paper at the annual meeting of the Society for Historians of American Foreign Relations, Bentley College, Waltham, MA, 23–26 June 1994 and his forthcoming *Presidential War Power*.

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NATO's Functions after the Cold War

JOHN S. DUFFIELD

When the cold war ended in Europe, many observers expected that NATO's demise would soon follow. Even if the alliance did not disappear altogether, it would become an empty shell, no longer performing any useful functions. In its place would emerge either a largely institution-free anarchy characterized by much looser, shifting alliances and a significantly greater risk of conflict[1] or possibly other European security institutions that were better suited to the needs of the post-cold war environment.

Contrary to such expectations, however, NATO has not become moribund. Indeed, it remains the leading security organization in Europe, even as the initial flurry of post-cold war institution building winds down. As a result, few analysts now expect the alliance to wither away soon.

This article seeks to clarify the reasons for NATO's continued vitality. It argues that initial analyses of the alliance's future omitted several crucial considerations: the persistence of external threats sufficient to help justify NATO's preservation, its potential for acquiring

[1] John Mearsheimer's pessimistic view of the future of Europe is predicated on this assumption. See his "Back to the Future: Instability in Europe After the Cold War," *International Security* 15 (Summer 1990): 5–56.

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important new tasks through a process of institutional adaptation, and, not least important, the alliance's contribution to smoothing relations among its own members. Consequently, these analyses failed to anticipate that NATO might continue to perform valuable security functions for its members, notwithstanding the precipitous decline in the Soviet threat. Although the allies may stress different purposes, a solid consensus exists among them on the need to preserve the alliance and its principal organizational structures.

To be sure, NATO's long-term prospects seem less certain than they did during the cold war. Under the new circumstances, a debilitating erosion of support for the alliance on the part of the members most critical to its survival is more difficult to rule out. In all probability, however, NATO will continue to make an important contribution to European peace and stability throughout the 1990s and for some time thereafter, far longer than could be expected on the basis of institutional inertia alone.

NATO's Surprising Persistence

Much of international relations theory teaches that states form military alliances in response to common external threats. Conversely, alliances should disintegrate when the threats that occasioned their formation disappear.[2] This tendency is reinforced by the fact that alliance membership usually entails at least some costs in terms of reduced autonomy and the risk of entrapment in another ally's conflicts.[3] In the absence of a common threat, moreover, concerns about the distribution of the benefits of cooperation will increase, making it more difficult.[4]

When the cold war ended, many observers expected that NATO might fall prey to such a pattern.[5] The alliance's primary purpose had been to address the threat posed by the Soviet Union to Western Europe.

[2] The balance-of-threat theory of alliances is developed most fully in Stephen M. Walt, *The Origins of Alliances* (Ithaca, NY: Cornell University Press, 1987).

[3] Glenn H. Snyder, "The Security Dilemma in Alliance Politics," *World Politics* 36 (July 1984): 461–95.

[4] This problem is discussed in Joseph M. Grieco, "Anarchy and the Limits of Cooperation," *International Organization* 42 (Summer 1988): 485–507.

[5] See, for example, Strobe Talbott, "Defusing the German Bomb," *Time*, 2 July 1990, 34; Malcolm Chalmers, "Beyond the Alliance System," *World Policy Journal* 7 (Summer 1990): 215–50; Pierre Hassner, "Europe Beyond Partition and Unity: Disintegration or Reconstitution?" *International Affairs* 66 (July 1990): 461–75 at 465–66; and Hugh De Santis, "The Graying of NATO," *Washington Quarterly* 14 (Autumn 1991): 51–65.

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In the short span of less than three years, however, this rationale all but evaporated. Once the Soviet Union under the leadership of Mikhail Gorbachev indicated that it would not resist political reform in Eastern Europe, the overthrow of Communist regimes and the collapse of the Warsaw Pact followed in short order, making the continued presence of Soviet forces in the region for more than a brief transition period untenable. And when the process of political reform accelerated within the Soviet Union, culminating in its own dissolution, the danger of coercion and aggression became even more remote. At the same time, the continuing costs of membership, including stationing forces abroad, hosting foreign forces, and other constraints on national freedom of action, threatened to undermine whatever support for the alliance remained.

In contrast to these pessimistic expectations, however, NATO has not only survived but has even added to its elaborate organizational bodies and undertaken new activities. The allies have updated their common strategic concept, maintained NATO's integrated military structure, and continue to engage in joint military planning, training, and exercises. They have developed new policies and fora for promoting dialogue and security cooperation with the former Communist states of Central and Eastern Europe. And most strikingly, the alliance has played a leading role in enforcing UN Security Council resolutions in the former Yugoslavia.

Although many members have substantially reduced their forces since 1989, these cuts have been consistent with the dramatic decline in the magnitude and immediacy of the military threats that they face and have been motivated primarily by budgetary considerations, not a desire to achieve greater defense autonomy. The remaining units remain assigned to the alliance, and even France has agreed to place some of its forces, which have been absent from the integrated military structure since 1966, under NATO operational control in the event of a crisis.[6] Not least important, the United States plans to maintain a militarily significant presence on the continent.

More fundamentally, NATO continues to enjoy generally strong support from its member states. For example, German political leaders, whose commitment was called into question by unification, have remained eager to maintain and strengthen the alliance. Top government

[6] This agreement is described in Foreign Broadcast Information Service (FBIS)–Western Europe (WEU)-93-050, 17 March 1993, 26–28.

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officials have repeatedly expressed the view that an effective integrated military structure and the presence of U.S. forces on German soil are still vital.[7] And even French officials, traditionally the most critical of NATO, have often acknowledged its enduring value.[8] Nor is this favorable attitude confined to the present governing parties and coalitions. Support for a strong NATO often ranges across the domestic political spectrum in member countries, such as Germany.[9] In short, NATO has remained the institution to which its members—and some nonmembers—primarily look to ensure their security.[10]

If NATO is far from moribund, what was wrong with the previous forecasts of the alliance's demise? What are the sources of its persistence? Put differently, why have NATO members found it in their interest to preserve the alliance?

Reasons for NATO's Persistence

Initial analyses of NATO's future prospects overlooked at least three important factors that have helped to ensure the alliance's enduring relevance. First, they underestimated the extent to which external threats sufficient to help justify the preservation of the alliance would continue to exist. In fact, NATO still serves to secure its members against a number of actual or potential dangers emanating from outside their territory. These include not only the residual threat posed by Russian military power, but also the relatively new concerns raised by conflicts in neighboring regions.

Second, the pessimists failed to consider NATO's capacity for institutional adaptation. Since the end of the cold war, the alliance has begun to develop two important new functions. NATO is increasingly seen

[7] For representative statements, see Chancellor Helmut Kohl, "Die Sicherheitsinteressen Deutschlands" in Presse- und Informationsamt der Bundesregierung, *Bulletin*, no. 13, 10 February 1993, 103–104; Foreign Minister Klaus Kinkel, "NATO's Enduring Role in European Security," *NATO Review* 40 (October 1992): 7; and Defense Minister Volker Rühe's Bundestag speech in FBIS-WEU-92-176, 10 September 1992, 18.

[8] See, for example, FBIS-WEU-91-182, 19 September 1991, 5; FBIS-WEU-92-148, 31 July 1992, 23–24; and FBIS-WEU-93-094, 18 May 1993, 15.

[9] See, for example, the speeches by Hans-Ulrich Klose, chairman of the Parliamentary Group of the Social Democratic party (SPD), and SPD Chairman Rudolf Sharping at the 30th and 31st Munich Security Policy Conferences, February 1993 and February 1994, respectively. The high degree of support for NATO within the SPD was also stressed by SPD officials in the author's interviews in Bonn, July 1993 and June 1994.

[10] Johan Jørgen Holst, "The Future of NATO," *The Norwegian Atlantic Committee Series*, no. 154, Oslo, 1993, 6.

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as having a significant role to play in containing and controlling militarized conflicts in Central and Eastern Europe. And, at a deeper level, it works to prevent such conflicts from arising at all by actively promoting stability within the former Soviet bloc.

Above all, NATO pessimists overlooked the valuable intra-alliance functions that the alliance has always performed and that remain relevant after the cold war. Most importantly, NATO has helped stabilize Western Europe, whose states had often been bitter rivals in the past. By damping the security dilemma and providing an institutional mechanism for the development of common security policies, NATO has contributed to making the use of force in relations among the countries of the region virtually inconceivable.

In all these ways, NATO clearly serves the interests of its European members. But even the United States has a significant stake in preserving a peaceful and prosperous Europe. In addition to strong transatlantic historical and cultural ties, American economic interests in Europe—as a leading market for U.S. products, as a source of valuable imports, and as the host for considerable direct foreign investment by American companies—remain substantial. If history is any guide, moreover, the United States could easily be drawn into a future major war in Europe, the consequences of which would likely be even more devastating than those of the past, given the existence of nuclear weapons.[11]

In sum, although NATO now lacks a single compelling *raison d'etre*, as it had in the past, the alliance continues to perform a number of valuable security functions for its members. As a result, all of the allies have found it in their interest to preserve NATO, notwithstanding differences in the importance they may attach to each of these purposes. The most significant of the alliance's external and internal functions are described in the next two sections.

NATO's External Functions

NATO continues to enhance the security of its members with respect to external dangers in several ways. First, it preserves the strategic balance in Europe by neutralizing the residual threat posed by Russian

[11] Officials in both the U.S. State and Defense departments cited NATO's contribution to stability in Europe as the primary reason for American interest in the alliance in interviews with the author, Washington, DC, December 1992 and March 1993. For further discussion, see Stephen Van Evera, "Why Europe Matters, Why the Third World Doesn't: American Grand Strategy After the Cold War," *Journal of Strategic Studies* 13 (Summer 1990): 8–12.

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military power. Second, it helps to address emerging new threats, including the complex perils posed by conflicts within and among the states of Central and Eastern Europe. Third, it impedes such threats from arising in the first place by contributing to the process of fostering stability in the former Soviet bloc.

Neutralizing the Residual Russian Threat

The military threat that the Soviet bloc could pose to Western Europe declined dramatically between 1989 and 1991. In particular, the danger of a massive, short-warning attack in the central region, perhaps the most demanding contingency NATO might have faced, was eliminated. The former threat did not disappear completely, however. The Soviet successor states continue to possess substantial military capabilities. Most importantly, Russia remains Europe's only nuclear superpower, and even Ukraine has so far retained a nuclear arsenal larger than those of Britain and France.[12] In addition, despite the Soviet departure from Central Europe, flank countries such as Norway and Turkey still face powerful Russian conventional forces stationed near their borders.[13]

Nor can anyone be certain that this military power will never again be used for hostile purposes. Under Presidents Gorbachev and Boris Yeltsin, the Soviet Union and Russia have pursued cooperation with the West and sought to reduce if not eliminate altogether the role of force in their external relations. In view of the twists and turns that have characterized Russian politics in recent years, however, it has not yet been possible to rule out the prospect of a return to a more confrontational, even expansionist posture. The tumultuous events of late 1993, especially the violent siege of the Russian parliament building and the strong showing of the nationalists in the subsequent parliamentary elections, only confirmed the view that the situation in Russia is likely to remain unsettled for a prolonged period during which continued Western concerns about future Russian intentions will be only natural.

[12] Ukraine has agreed on more than one occasion to eliminate its nuclear weapons. Deep political divisions within the country and concerns about Russia make it doubtful that these promises will be fulfilled on schedule, if at all.

[13] On the threat to Norway, see Ted Greenwood and Stuart Johnson, "NATO Force Planning Without the Soviet Threat," *Parameters* 22 (Spring 1992): 27–37.

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In view of these uncertainties, the countries of Western Europe have found it desirable to maintain a counterweight to the residual military power of the former Soviet Union, especially Russia's nuclear capabilities. Alone, however, they lack the means to do so. Only the United States is seen as fully able to neutralize the potential nuclear threat, however remote it may be, and more generally to preserve the European strategic balance.[14] And it is primarily through NATO that American military power is linked to the continent.[15]

Addressing Conflicts within Central and Eastern Europe

A second post-cold war NATO function that has assumed greater prominence is the protection of alliance members against an array of newly emerging threats. Increasing attention has been paid to possible dangers emanating from North Africa and the Middle East, in part because of the spread of the technology for producing missiles and weapons of mass destruction to those areas. Highest on the list of new external concerns, however, are ethnic, territorial, and national conflicts within and among the countries of Central and Eastern Europe, as exemplified by the fighting in the former Yugoslavia. Such conflicts have the potential to generate large numbers of refugees or even to spill over onto the territory of neighboring countries, which include NATO members. In a worst case scenario, outside states might feel compelled to intervene, risking an expansion of hostilities, as occurred at the beginning of World War I.

Although so far unable to put an end to such conflicts, NATO helps to address the concerns they raise in several ways. First, it protects its members against the possible spillover of military hostilities. While no alliance countries have yet been seriously threatened in this way, NATO's long experience with organizing the defense of its members leaves it well prepared to deal with such contingencies.

NATO also helps to prevent other countries from being drawn into conflicts of this type. The existence of the alliance reassures member

[14] This sentiment was expressed repeatedly in the author's interviews with German, other West European, and NATO officials in Washington, DC, December 1992; Bonn, July 1993; and Brussels, June 1994. For official German views, see also FBIS-WEU-91-039, 27 February 1991, 11; FBIS-WEU-91-071, 12 April 1991, 8; FBIS-WEU-91-196, 9 October 1991, 8; *Bulletin*, no. 6, 18 January 1993, 42; and *Bulletin*, no. 8, 25 January 1993, 146.

[15] See also, David M. Abshire, Richard R. Burt, and R. James Woolsey, *The Atlantic Alliance Transformed* (Washington, DC: Center for Strategic and International Studies, August 1992), 16.

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states bordering on the region that they will not be left alone to deal with nearby wars should they escalate or spill over, thereby reducing the incentive to intervene unilaterally. Instead, NATO's presence helps to ensure that Western military involvement in such conflicts, where it occurs at all, is collective and consensual.[16] At the same time, the possibility of a sharp, coordinated NATO response may inhibit other countries from meddling.

As the fighting in the former Yugoslavia has dragged on, moreover, the alliance has been increasingly seen as having an active role to play in containing and even suppressing conflict among national and subnational groups within Central and Eastern Europe, and it has steadily enhanced its political authority and organizational ability to act should its members choose to do so. In 1992, the allies agreed to make NATO resources available to support peacekeeping operations mandated by the Conference on Security and Cooperation in Europe (CSCE) and the United Nations (UN).[17] And in early 1994, they approved the development of a mechanism termed Combined Joint Task Forces (CJTF) that would enable groups of members—"coalitions of the willing"—to draw upon common alliance assets for specific operations outside of the treaty area.[18]

Most dramatically, the alliance has gained valuable experience in the former Yugoslavia, firing shots in anger for the first time in its history. NATO forces have enforced both the maritime blockade in the Adriatic and the no-fly zone over Bosnia. They have provided protective air power for UN personnel on the ground. And they have used the threat of air strikes to establish exclusion zones for heavy weapons around Sarajevo and the UN-designated safe area of Gorazde. Although NATO's impact on the conflict has not yet been decisive, this lack of success can be only partly ascribed to the alliance itself; its ability to intervene effectively in future regional conflicts has clearly increased.

Stabilizing the Former Soviet Bloc

A closely related function is that of stabilizing the countries of the former Soviet bloc in order to prevent the outbreak of hostilities in

[16] Robert Jervis, "The Future of World Politics: Will It Resemble the Past?" *International Security* 16 (Winter 1991/92): 58.

[17] "Communique Issued by the Ministerial Meeting of the North Atlantic Council," Brussels, 17 December 1992, *NATO Review* 40 (December 1992): 28–31.

[18] For details, see *New York Times*, 6 January 1994; and *Washington Post*, 11 January 1994.

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the first place. Following the collapse of communism, many of these states have undertaken ambitious political and economic reforms. The Western stakes in these efforts are substantial, since failure could lead to domestic turmoil, mass migrations, armed conflicts, and even direct military threats to nearby NATO members.

Yet success is not assured. Reform among peoples with no recent experience with democracy or free markets is inherently difficult. And these considerable domestic obstacles are often compounded by an uncertain and seemingly threatening external security environment. In particular, many Central and East European states are concerned about possible adverse developments within the former Soviet Union that could lead to a renewal of military coercion or armed conflict on their borders.[19] If left unprotected, moreover, they may feel pressure to acquire additional military forces and to take other precautionary measures that could be viewed as provocative by their neighbors, thereby undermining rather than enhancing stability.

NATO promotes stability in the former Soviet bloc in two ways. First, it directly fosters the success of political reform in the region. Since 1990, NATO has established a wide array of programs and institutions for dialogue and cooperation on security issues, most notably the North Atlantic Cooperation Council (NACC) and the Partnership for Peace (PfP), through which it can assist the fledgling regimes in reshaping their defense policies, structures, and planning processes.[20] In particular, these new arrangements can reinforce democratic control of the armed forces and respect for civilian authority by exposing Central and East European leaders to Western models of civil-military relations.[21]

Second, NATO enhances the security of Central and East European states by assuring them that they would not have to face external threats entirely on their own, thereby helping them to forgo potentially destabilizing actions and to pursue their ambitious agendas of domestic reform with greater confidence.[22] Since 1990, the North Atlantic Council

[19] Such concerns, while always present, were sharpened most recently by the success of nationalist forces in the December 1993 Russian parliamentary elections. See Jane Perlez, "NATO Commitment Sought by Poland," *New York Times*, 12 December 1993.

[20] For details of the initial steps, see Stephen J. Flanagan, "NATO and Central and Eastern Europe: From Liaison to Security Partnership," *Washington Quarterly* 15 (Spring 1992): 141–51.

[21] Abshire, Burt, and Woolsey, *Atlantic Alliance Transformed*, 8 and 20; and author's interview with U.S. State Department official, Washington, DC, March 1993.

[22] Author's interview with the West European official, Washington, DC, November 1992; interview with U.S. Embassy official, Bonn, July 1993; and Lothar Ruehl, "NATO's Role of Reassurance in Central Europe," *German Tribune*, no. 1467, 19 May 1991, 2.

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has repeatedly offered strong verbal expressions of interest and support, such as the statement issued during the August 1991 Soviet coup attempt: "We expect the Soviet Union to respect the integrity and security of all states in Europe."[23] The NACC allows former Soviet bloc states to voice their concerns and to discuss a wide range of security issues on a regular basis while sitting as equal partners with their NATO counterparts.[24] And the recently adopted PfP offers each participant formal consultations with the alliance, should it perceive a direct threat to its security, and concrete military ties with NATO members via involvement in a variety of military activities and operations.[25]

Admittedly, such measures are not ideal from a Central and East European perspective. So far, NATO has refused to offer these countries full membership and security guarantees for fear of antagonizing nationalist elements in Russia and of importing potential territorial and ethnic conflicts into the alliance. But even the looser political and military links that have been offered promise greater security than alternative arrangements. And participation in the PfP is widely seen as an important step toward eventual membership, the possibility of which has been reaffirmed by the alliance even if specific criteria and timetables remain to be established. Consequently, Central and East European states quickly put aside any feelings of disappointment to embrace the program.

NATO's Intra-alliance Functions

Although analyses of NATO have typically emphasized its role in securing member states against external threats, the alliance has not been exclusively outward oriented. From very early in its history, NATO has played an important role in smoothing relations among its members as well.[26] Because alliance officials, for obvious reasons, have been reluctant to talk openly about the subject, it has often been overlooked by outside observers. But with German unification and the disappearance of a single compelling external threat capable of forging

[23] See *NATO Review* 39 (August 1991): 8–9.

[24] NATO officials also stress how the NACC helps ease tension in Central and Eastern Europe by promoting dialogue directly among the states of the region. Interviews with author, Brussels, June 1994.

[25] See *NATO Review* 42 (February 1994): 28–30.

[26] See, especially, Josef Joffe, "Europe's American Pacifier," *Foreign Policy* 54 (Spring 1984): 68.

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alliance unity on most issues, these intra-alliance functions have assumed even greater importance.

Intra-alliance Reassurance

The most important intra-alliance function is that of reassurance. The continued existence of NATO, including its integrated military structure and the U.S. military presence, assures its members that they have nothing to fear from one another.[27] Of particular concern in this regard, of course, is newly unified Germany. As many analysts have noted, few if any concrete reasons exist for expecting a renewal of German aggression. Germany has willingly accepted sharp limits on its military capabilities. More fundamentally, the values of democracy, antimilitarism, and international cooperation are deeply entrenched in the Federal Republic.[28]

Nevertheless, perceptions do matter, and the profound change that has occurred in Germany's position within the European state system will inevitably raise questions about its future foreign policy orientation. West Germany's already substantial economic power and its long-term military potential have been augmented by unification. In addition, Germany now faces fewer external constraints on its behavior while enjoying greater opportunities for self-assertion, especially those afforded by the reopening of Central and Eastern Europe. Thus it would not be unnatural for countries that have been victimized by Germany in the past to be concerned that Germany might someday use its new power in ways that are inimical to their interests. Just as it took some years for its neighbors to become comfortable with the idea of a rearmed West Germany, they will need time to get used to the presence of a unified Germany in their midst.[29]

In the meantime, the maintenance of stability requires forestalling the emergence of acute fears of Germany, or of any other West European country for that matter, and NATO remains the leading institu-

[27] Or as Stephen Flanagan has aptly put the matter, NATO helps "to take concerns about each other out of the security risk calculus of member states" ("NATO and Central and Eastern Europe," 149).

[28] See, for example, Daniel Hamilton, "A More European Germany, A More German Europe," *Journal of International Affairs* 45 (Summer 1991): 127–49; and Richard H. Ullman, *Securing Europe* (Princeton, NJ: Princeton University Press, 1991), 57–58.

[29] For summaries of these concerns, see Stephen Van Evera, "Primed for Peace: Europe After the Cold War," *International Security* 15 (Winter 1990/91): 5–8; and Andrei Markovits and Simon Reich, "Should Europe Fear the Germans?" *German Politics and Society* 23 (Summer 1991): 5–8.

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tional vehicle for performing this essential reassurance function. As Christoph Bertram, former director of the International Institute for Strategic Studies, has argued, "NATO makes German power controllable and thus acceptable to allies and political adversaries alike. Germany outside NATO would raise international concerns."[30] Indeed, during the critical 1990 negotiations over the terms of German unification, even Soviet leaders concluded that it would be best for Germany to remain firmly integrated within NATO.[31]

NATO reduces the possibility of conflict among its West European members in three ways: it increases transparency; it inhibits the renationalization of their security policies; and by binding the United States to the continent, it ensures the maintenance of a balance of power in the region.

Increasing Intra-alliance Transparency

An important potential source of international conflict is misperception and misunderstanding among states. In the absence of detailed and reliable information, decision makers may exaggerate the offensive military capabilities of other countries or misinterpret foreign intentions, often perceiving them as more hostile than they actually are. They also tend to overlook the security concerns that their own actions may raise abroad. Consequently, international relations are often characterized by suspicion and mistrust.[32]

NATO helps to prevent such destructive dynamics from arising among its members and instead promotes mutual confidence by facilitating a high degree of intra-alliance transparency. Frequent consultation at many levels and on many subjects allows members to inform one another of their activities and intentions and, if necessary, to register their concerns and misapprehensions. Participation in the alliance's force planning process requires members to exchange detailed information about their military forces, defense budgets, and future plans. As a result of such institutionalized openness, NATO members are

[30] "Visions of Leadership: Germany" in Steven Muller and Gebhard Schweigler, eds., *From Occupation to Cooperation: The United States and United Germany in a Changing World Order* (New York: Norton, 1992), 61.

[31] Ivan G. Tyulin, "The Future of NATO in a Changing Europe" in Beverly Crawford, ed., *The Future of European Security* (Berkeley: University of California, International and Area Studies, 1992), 51.

[32] For further discussion of these dynamics, see Robert Jervis, *Perception and Misperception in International Politics* (Princeton, NJ: Princeton University Press, 1976).

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able to keep few secrets from each other, and they have fewer incentives to do so.[33]

Denationalizing Security Policy

A further way in which NATO fosters reassurance among its members is by integrating their security policies.[34] To varying but usually substantial degrees, NATO countries formulate and execute their security policies as part of the alliance rather than on a purely national basis. This denationalization of security policy tempers the natural rivalry and competition for military primacy that might otherwise occur among the major European powers, and it helps to preclude any intra-European use of military posturing for political influence. Should renationalization occur, on the other hand, it "could give rise to concerns about internal imbalances in Western Europe" and generate renewed mistrust, competition, and even conflict.[35]

NATO promotes the denationalization of security policy in several ways. At the most basic level, its consultative organs, force planning process, and integrated military structure help forge a common identity among alliance members. Regular and in-depth consultation contributes to a high degree of mutual understanding. Joint force planning helps reshape each member's military posture to reflect alliance-wide, rather than national interests. And assignments to the alliance's civilian bureaucracy and military organization socialize government officials and military officers into a common NATO culture.[36]

In addition, participation in NATO's integrated military structure fosters reduced military self-sufficiency on the part of member countries, especially in the central region of Europe, since it allows them to forgo or at least to deemphasize a good number of the ingredients essential to an independent military capability. For example, many European countries depend heavily on NATO's multinational airborne early warning force and its integrated air defense system. In order to husband defense resources, moreover, both small and large countries

[33] Frederic L. Kirgis, Jr., "NATO Consultation as a Component of National Decisionmaking," *American Journal of International Law* 73 (July 1979): 372–406.

[34] Author's interviews with West European and U.S. Defense Department officials, Washington, DC, December 1992; German official, Bonn, July 1993; and NATO official, Brussels, June 1994. See also the speech by Kinkel in *Bulletin*, no. 18, 3 March 1993, 143; and Greenwood and Stuart, "NATO Force Planning," 28.

[35] Holst, "Future of NATO," 14–15.

[36] See, for example, FBIS-WEU-93-057, 26 March 1993, 4.

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have sacrificed the ability to carry out certain missions, such as air reconnaissance and mine sweeping, knowing that other allies would perform them. And even the powerful German ground forces have relied on their U.S. counterparts to provide some indirect fire support.[37] At the same time, multinational integration establishes a degree of mutual control by increasing the level of collective involvement in organizational and operational planning. Indeed, Germany has never developed a full-fledged national planning and command capability above the corps level, counting instead on multinational NATO staffs to conduct those vital tasks. Thus the continued existence of the integrated military structure places constraints on the ability of many members to use their forces for exclusively national objectives, at least in the short- to medium-term, and reassures them as to the common purpose of their military power. In its absence, the possibility that the forces of one country could raise alarms in another would be much greater.[38]

The intra-alliance benefits of NATO's integrated military structure are seen most clearly with respect to Germany. The other countries of Western Europe are eager to see that Germany remains tightly bound within the NATO framework. Even France dropped its usual reserve and involved itself in the alliance reform process in the early 1990s out of "its wish to keep NATO as a strong multilateral structure for the integration and control of German military power."[39] German leaders themselves, sensitive to the need to reassure their neighbors in the wake of unification, recognize the opportunity that participation in NATO provides to defuse possible fears of a resurgent Germany and thus to foster a more cooperative European environment.[40]

U.S. Contributions to Reassurance

The existence of the integrated military structure by itself, however, is no guarantee of continued participation by NATO members. Rather,

[37] Author's interview with General John R. Galvin, Harrisonburg, Virginia, December 1993.

[38] *The United States & NATO in an Undivided Europe*, A Report by the Working Group on Changing Roles and Shifting Burdens in the Atlantic Alliance (Washington, DC: The Johns Hopkins Foreign Policy Institute, 1990), 7.

[39] Reinhardt Rummel, "Integration, Disintegration, and Security in Europe: Preparing the Community for a Multi-institutional Response," *International Journal* 47 (Winter 1991–2): 76.

[40] See, for example, the remarks by Chancellor Helmut Kohl and former Defense Minister Stoltenberg in FBIS-WEU-90-056, 22 March 1990, 8; FBIS-WEU-90-121, 22 June 1990, 6; and *Washington Post*, 7 May 1990.

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their willingness to eschew a national approach to defense follows from the belief that the alliance offers them greater security with respect to possible external threats, and here the United States makes a unique contribution. It is U.S. involvement in the form of security guarantees and the presence of American forces in Europe that perhaps more than any other factor assuages the security concerns of other NATO countries. As a result, the renationalization of security policy appears unnecessary and even undesirable.[41] Moreover, the protection afforded by the United States allows NATO members to limit their armed forces. In particular, it obviates any German need to acquire a nuclear capability.

If, in contrast, alliance members did not feel that their concerns were being adequately addressed by collective arrangements, they would be inclined to take whatever steps they regarded as necessary to provide for their security. Thus U.S. disengagement could trigger a renationalization of security policy, and Germany would be no exception to this trend. Without strong security ties to the United States, it is not unimaginable that Germany would feel compelled in the face of external threats to increase its armed forces beyond the existing treaty limits and to develop a nuclear deterrent, notwithstanding present domestic constraints.[42] To do any less under threatening circumstances could be regarded as an abdication of governmental responsibility. Yet such steps would undoubtedly alarm Germany's neighbors.

Even in the absence of the integrated military structure, direct U.S. involvement in European security affairs exerts a calming and stabilizing effect on West European politics. This is because U.S. security guarantees and an American military presence also help ensure the maintenance of a balance of power within the region. Only the United States is perceived as powerful enough to play this internal balancing role. Yet as an extracontinental power, it does not stir fears of military domination.[43]

[41] Joffe, "Europe's American Pacifier," 68; Heisbourg, "European-American Alliance," 668; and Manfred Wörner, "The Atlantic Alliance: New Roles in a Changing World" in Center for International Affairs, *Allies or Adversaries?* (Lanham, MD: University Press of America, 1993), 225.

[42] Michael Stuermer, *Washington Post*, 26 July 1992.

[43] Author's interviews with NATO and German officials, Brussels, June 1994. See also Abshire, Burt, and Woolsey, *Atlantic Alliance Transformed*, 14 and 42; Karl Lowe and Thomas-Durell Young, "Multinational Corps in NATO," *Survival* 33 (January/February 1991): 76; and Charles L. Glaser, "Why NATO is Still Best: Future Security Arrangements for Europe," *International Security* 18 (Summer 1993): 22.

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Not surprisingly, U.S. engagement is seen as particularly useful for providing a counterweight to Germany's military power and potential. In the absence of the United States, NATO would be dominated by Germany, making the rest of Europe uneasy.[44] This function is accepted and even encouraged by German leaders, who recognize that "an American presence in Europe allows its neighbors to feel far more comfortable with the new and larger Germany."[45]

NATO and the U.S. Contribution

It could be argued that many of the contributions that the United States makes to stabilizing relations among the countries of Western Europe could be accomplished without NATO. For example, the United States could offer security guarantees on an individual basis. Likewise, it might be possible to make bilateral arrangements for the stationing of U.S. troops in Europe.

NATO is likely to remain essential for perpetuating U.S. involvement in European security affairs, however. Bilateral security guarantees could be viewed as directed against specific countries, thereby increasing rather than reducing intra-European tensions. In addition, NATO greatly facilitates a continued U.S. military presence on the continent, which is what in turn gives American guarantees much of their force. This presence would be harder to organize and to legitimize outside of a multilateral framework.

Institutional Alternatives to NATO

In theory, other institutions could perform one or more of the functions described above. Moreover, NATO is not yet able to achieve other desirable objectives, such as fully reassuring the states of Central and Eastern Europe or putting a stop to ethnic conflict wherever it may occur in the region. Consequently, some analysts have suggested that other European institutions would – and should – assume the alliance's heretofore central role in the framing of its members' security

[44] See, for example, U.S. House of Representatives, Committee on Foreign Affairs, Subcommittee on Europe and the Middle East, Hearings, *U.S.-German Relations*, 29 January 1992, 102d Cong., 2d sess. (Washington, DC: Government Printing Office, 1992), 45.

[45] Robert Gerald Livingston, "United Germany: Bigger and Better," *Foreign Policy* 87 (Summer 1992): 169. See also Harald Müller, "German Foreign Policy After Unification" in Paul B. Stares, ed., *The New Germany and the New Europe* (Washington, DC: The Brookings Institution, 1992), 156; and FBIS-WEU-93-027, 11 February 1993, 23.

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policies. Two principal alternatives stand out: a European collective security organization, which would be built upon the existing Conference for Security and Cooperation in Europe (CSCE) or possibly the Western European Union (WEU); and a West European defense organization, which would be based on the WEU and would form a part of the European Union (EU).[46]

These alternatives do not yet exist, however, and they will not be easy to develop. More fundamentally, it is not at all clear that they would be able to perform NATO's most important post-cold war functions any better than or even as well as the alliance. NATO is likely to remain a superior overall vehicle for addressing the security concerns of its members, although the CSCE and WEU also have useful roles to play.[47]

CSCE

Several features of the CSCE make it attractive as an alternative to NATO. Most importantly, it includes all European states as equal partners, thereby helping to ensure that their security concerns are heard and that no important states, especially Russia, feel left out or relegated to a second-class status, creating unnecessary tension. Consequently, the CSCE is the focus of efforts to develop pan-European mechanisms for conflict prevention, crisis management, and dispute resolution. And it is the logical regional source of mandates for enforcing international law, with the use of force if necessary.

Despite these strengths, however, the CSCE suffers from several distinct disadvantages in comparison with NATO that sharply circumscribe its potential role. First, decision making within the CSCE will remain much more cumbersome, given its much larger number of members and the greater diversity of their interests and perspectives, raising doubts about its ability to respond effectively to a wide range of contingencies. Second, any organization based on the CSCE will

[46] For discussions of possible alternative collective security structures, see Chalmers, "Beyond the Alliance System"; Ullman, *Securing Europe*; Charles A. Kupchan and Clifford A. Kupchan, "Concerts, Collective Security, and the Future of Europe," *International Security* 16 (Summer 1991): 114–61; and Jonathan Clarke, "Replacing NATO," *Foreign Policy* 93 (Winter 1993–94): 22–40. A West European defense organization is suggested in Stanley Hoffmann, "Reflections on the 'German Question'," *Survival* 32 (July/August 1990): 291–99; and Ivo H. Daalder, "Redefining European Security" in Eric H. Arnett, ed., *Science and International Security* (Washington, DC: American Association for the Advancement of Science, 1990), 318.

[47] Charles Glaser reaches similar conclusions in "Why NATO is Still Best."

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probably lack security guarantees as firm as those offered by NATO as well as a comparable collective military capacity. Participants will be reluctant to make strong, formal commitments to regions where the interests at stake are less clear or where a substantial potential for conflict is present.

As a result, the CSCE is also unlikely to involve the United States as deeply in European security affairs as does NATO. Although the United States would almost certainly be welcome in any European collective security organization, it would be bound even more tightly to the continent through continued participation in NATO's highly integrated structures. Moreover, the stationing of U.S. forces in Europe would be harder to justify to a skeptical American public under less familiar institutional arrangements. In short, NATO is "the only institution politically able to keep the Americans fully engaged in Europe. . . ."[48] Rather than as an alternative, it makes much more sense to view the CSCE as an institutional complement to NATO that can serve to legitimize the use of alliance forces in the region for the purposes of peacekeeping and peace enforcement.

The Western European Union

A West European defense organization based on the WEU also has considerable appeal. The WEU possesses even stronger guarantees than does NATO, is now developing a military planning capability, and could conceivably acquire an integrated command structure. In principle, moreover, the need to reassure the countries of Western Europe with respect to each other would be rendered moot by the creation of a truly unified European defense force, which represents the ultimate long-term solution to the regional security dilemma and potential concerns about Germany.

Nevertheless, this alternative has several obvious shortcomings that make it a poor substitute for NATO. In the short to medium term at least, NATO will offer much greater institutional capacity. This includes its highly developed mechanisms for consultation on security issues, its well-practiced military planning and command structure, its extensive network of common infrastructure, and its integrated forces.[49] As a result, the alliance is regarded as by far the most capable

[48] Elizabeth Pond, "Germany in the New Europe," *Foreign Affairs* 71 (Spring 1992): 122.

[49] See, for example, Kinkel, "NATO's Enduring Role," 6; and Heisbourg, "European-American Alliance," 674.

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of Europe's existing security institutions to engage in regional peacekeeping and peacemaking actions, especially large-scale and complex operations.

In theory, the WEU could inherit many of these elements from NATO, should the latter ever be disbanded, given the high degree of overlapping membership between the two organizations. Virtually any resulting West European defense organization, however, would be greatly hampered by the absence of the United States. Anything short of a truly unified force would suffer without the stabilizing influence that U.S. participation has on relations in the region. No West European country is capable of substituting for the United States in its role as internal balancer.

The United States also provides a number of valuable military resources that its European allies would be hard pressed to match, either singly or jointly. These include satellite surveillance; command, control, communication, and intelligence; logistics; long-range airlift and sealift; all-weather aviation; amphibious capabilities; large-deck aircraft carriers; and missile defenses. Without U.S. participation, Western Europe's ability to engage in out-of-area operations and perhaps even to defend against certain regional threats would be much reduced. Indeed, as allied defense budgets continue to shrink, the attractiveness of relying on American troops and technology may even grow. Thus the West Europeans have no simple alternative to continued military dependence on the United States for years to come.[50]

The U.S. contribution is not just a matter of military capabilities, however, but also one of political leadership. While the countries of Western Europe may not always agree with the policy goals or instruments favored in Washington, its preponderance within the alliance allows the United States to exercise such leadership as setting the agenda, defining options, and determining the pace of NATO action. In the absence of a natural leader, in contrast, any West European grouping will find it more difficult to act decisively in contingencies short of an immediate military threat.[51]

[50] Echoing this conclusion are Abshire, Burt, and Woolsey, *Atlantic Alliance Transformed*, 30; Anand Menon, Anthony Forster, and William Wallace, "A Common European Defence?" *Survival* 34 (Autumn 1992): 107; and Paul Bracken and Stuart E. Johnson, "Beyond NATO: Complementary Militaries," *Orbis* 37 (Spring 1993): 205–222.

[51] Author's interviews with West European official, Washington, DC, December 1992, and NATO and German officials, Brussels, June 1994. As one British official said with regard to the conflict in Bosnia, "Unless America gets involved, don't sit on the edge of your chair waiting for the Europeans" (*Washington Post*, 21 December 1992). See also *Washington Post*, 27 April 1993; *Washington Post*,

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The Feasibility of Alternatives

In addition to doubts about the advantages of possible alternatives to NATO, good reasons exist for questioning their feasibility. As a general rule, alternatives will not be easy to construct. The erection of new international institutions entails considerable start-up costs. Consequently, existing institutions may be retained and modified, where necessary, even though alternatives might yield greater benefits in the long run. In addition, states are inclined to stick with the arrangements that have worked in the past and with which they are most familiar. These tendencies are reinforced by uncertainty about the future, imperfect information, and risk aversion.[52]

Further concrete obstacles are likely to stand in the way of the creation of true alternatives, as illustrated by the limited progress made so far toward the establishment of a European security and defense identity within the EU. For the preceding reasons, most EU states want to maintain a strong NATO. Consequently, some have resisted the further development of a separate West European entity for fear that doing so might weaken the alliance. Others, such as Germany, see no conflict but nevertheless want to avoid unnecessary duplication of capabilities and thus are extremely reluctant to invest in an alternative military organization as long as NATO's integrated structure and common military assets exist.[53] They would prefer instead to draw upon NATO resources for WEU military operations, as may be facilitated by CJTF, in situations where the United States is unwilling to participate. Finally, the development of the WEU will be hostage to more general progress toward West European political unity, which has slowed considerably since the December 1991 signing of the Maastricht Treaty on European Union and which may itself paradoxically be facilitated by NATO's presence.[54]

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9 May 1993; and Flora Lewis, "It Isn't 'Yankee, Go Home' Any More," *New York Times*, 13 February 1993.

[52] See the thorough discussion in Richard Weitz, "State Cooperation in Multilateral Security Alliances" (paper presented at the annual meeting of the International Studies Association, Acapulco, March 1993), 40–44. I am also indebted to Wolfgang Schlör for helpful comments on this point.

[53] This point was made frequently by German officials during author's interviews in July 1993 and June 1994.

[54] In any case, the treaty provides only for "the eventual framing of a common defence policy, which might in time lead to a common defence." And NATO's primacy is further assured by the provision that the EU's common foreign and security policy "shall respect the obligations of member states under the North Atlantic Treaty and be compatible with the common security and defence policy established within that framework" See *Treaty on European Union*, 126.

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NATO's Future Prospects

Despite NATO's enduring value and its advantages over the leading institutional alternatives, its long-term survival is not assured. NATO's continued existence hinges not only on its ability to address the security concerns of its members, who alone have the power to sustain it or to allow it to decay. It also depends on their recognition of this fact, and it is not inconceivable that the alliance's contributions to stability in Europe could go increasingly unappreciated.

Attitudes within two members states in particular will shape NATO's future prospects. The unique role of the United States has already been discussed. Its ability to play this role depends in turn on Germany's participation in the alliance. Germany continues to host the bulk of the American troops stationed on the continent, and its absence from NATO's political and military organs would greatly limit their usefulness for suppressing potential conflict in Western Europe. Germany also contributes by far the largest number of forces to the alliance in the central region.

German Support for NATO

Yet concern has been expressed about Germany's willingness to preserve NATO and to host a significant number of foreign troops. Initial surveys of public opinion after unification suggested a weakening of support for the alliance. More ominously, a majority seemed to favor a complete U.S. withdrawal.[55] And the potential for a further erosion of public support for an American military presence was considerable, since convincing justifications for the continued stationing of U.S. forces would be even harder to articulate once all former Soviet troops had departed in 1994.[56]

More recent polls, however, have shown a fairly steady increase in public support for the alliance, and the percentage of Germans favoring a complete U.S. withdrawal has stabilized, if not declined.[57]

[55] Ronald D. Asmus, "Germany in Transition: National Self-Confidence and International Reticence" in *U.S.-German Relations*, 16 and 19.

[56] Ibid., 29–33; Halmar Linnenkamp, "The Security Policy of the New Germany" in Stares, ed., *The New Germany*, 104; and author's interview with U.S. Defense Department official, Washington, DC, March 1993.

[57] Ronald D. Asmus, "Germany's Geopolitical Maturation: Strategy and Public Opinion After the Wall," *Rand Issue Paper*, February 1993, 1; and Asmus, *German Strategy and Opinion After the Wall 1990–1993* (Santa Monica, CA: Rand, 1994), 32 and 37–39.

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At the same time, NATO has taken a number of steps that should have the effect of making the presence of foreign forces in Germany more palatable in the long run. These steps include deemphasizing the role of nuclear weapons in NATO strategy, the withdrawal of all U.S. nuclear warheads for artillery and missiles from Europe, deep reductions in the number of foreign forces, further multinational integration of the remaining NATO forces, and restrictions on training and exercises in Germany.

More fundamentally, one should not necessarily expect German political leaders to take their cues from public opinion, especially on such complex and consequential issues.[58] And values and beliefs widely shared within the German political elite clearly militate against a significant shift in policy toward NATO. German leaders exhibit a strong distate for unilateralism, or following a special path (*Sonderweg*), which they believe can only lead to isolation and conflict. Instead, they stress the need to pursue Germany's security interests in close cooperation with other countries and thus place a high value on multilateral security institutions such as NATO.

The emphasis on multilateralism causes German leaders in turn to attach tremendous importance to *Berechenbarkeit*, or calculability, in foreign policy. They want their country to be perceived as a reliable, predictable, and dependable partner. As a result, there is a strong "presumption against any government reneging upon, let alone renouncing, the basic substance of established foreign-policy commitments."[59]

Many Germans also remain reluctant to see their country play a leadership role in international affairs. Consequently, membership in an alliance dominated by the United States serves the useful purpose of enabling Germany to maintain a comfortably low profile. Finally, the almost visceral rejection on the part of many Germans of the development of a national nuclear capability helps to preserve a significant degree of security dependence upon the United States.

U.S. Support for NATO

Equally important are attitudes in the United States, given that NATO's ability to perform its functions remains critically dependent on Amer-

[58] A recent study found that German foreign policy and public opinion were consistent only 56 percent of the time between 1977 and 1987. See Joel E. Brooks, "The Opinion-Policy Nexus in Germany," *Public Opinion Quarterly* 54 (Winter 1990): 508–29.

[59] Clay Clemens, *Reluctant Realists: The Christian Democrats and West German Ostpolitik* (Durham, NC: Duke University Press, 1989), 247.

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ican involvement. Yet continued U.S. support for the alliance, including more than just a token military presence in Europe, cannot be taken for granted. Although the United States has a decided interest in promoting peace and prosperity on the continent, the resulting benefits are less direct and tangible than they are for its European allies.

Consequently, some fear that the U.S. military contribution could fall to the point where the alliance can no longer be sustained. The American presence in Europe has already declined by nearly two-thirds, to a little more than 100,000 military personnel. And although a contribution of this magnitude has generally been regarded as adequate,[60] even deeper cuts cannot be ruled out. The United States is simultaneously beset by substantial economic problems and a rapidly expanding federal debt, and NATO-assigned forces make an easy target for budget cutters. With the decline of the former Soviet threat, moreover, the need to maintain troops on the continent—and NATO itself—may be even less apparent in the United States than in Europe.

The danger that the U.S. military contribution to NATO will be eviscerated should not be exaggerated, however. Very few influential voices have advocated a complete withdrawal from Europe. As troop levels and their associated costs have come down, the pressure for additional reductions has subsided. The presently planned American contingent in Europe will comprise only about 7 percent of all active U.S. forces, in contrast to some 15 percent in the late 1980s.

Continued strong American backing for the alliance is further assured by the fact that NATO remains the principal institutional vehicle through which the United States can influence West European policies.[61] Alliance membership entitles the United States to play a direct role in shaping a variety of European security issues. And active American engagement, including the presence of U.S. forces on the continent, endows the United States with considerable leverage. Indeed, the influence provided by its NATO involvement may even extend to other bilateral and multilateral issues, including those in the economic field. One American diplomat reportedly stated that by exerting its military weight in Europe through NATO, the United States is able

[60] See, for example, Don M. Snider, "U.S. Military Forces in Europe: How Low Can They Go?" *Survival* 34 (Winter 1992–93): 33–35.

[61] Author's interviews with General Galvin, Charlottesville, Virginia, November 1992, and U.S. State Department official, March 1993; Daalder, "Redefining European Security," 310; General Klaus Naumann, *Transatlantic Security Challenges in the Post-Communist World* (Washington, DC: Konrad Adenauer Stiftung, 1992), 11.

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to "tell the Europeans what we want on a whole lot of issues—trade agriculture, the gulf, you name it."[62]

Finally, there is the intangible matter of American prestige. Perhaps no development would symbolize the decline of U.S. power and international influence more than would the effective demise of NATO. Thus policies that could gut the alliance, whether intentionally or not, are sure to face strong resistance, if only out of an unwillingness to countenance any diminution in the global stature of the United States.

For all these reasons, a serious domestic challenge to U.S. support for and participation in NATO is highly unlikely to materialize. There is general recognition of the alliance's continuing value, as evidenced by the widespread interest among political and opinion leaders in expanding the alliance's membership and strengthening its ability to deal with conflicts outside its traditional geographical ambit. It should be quite feasible to maintain 100,000 troops in Europe, as the Clinton administration has repeatedly promised to do.

In sum, it is still far too early to write NATO off. The alliance continues to perform several vital security functions—both internal and external—that were overlooked by initial analyses of its post-cold war prospects. As a result, its members have found it in their interest to maintain the alliance, and their reasons for doing so are unlikely to become obsolete any time soon. Moreover, no clearly advantageous institutional alternatives seem to be available. Thus NATO's persistence as a highly integrated military alliance should come as no surprise, and good grounds exist for expecting it to remain Europe's leading security organization well into the future.*

Postscript

Developments in the Balkans since this manuscript was completed have raised new doubts about NATO's future prospects. In particular, some commentators interpreted the transatlantic dispute over how and even whether to protect the UN-designated safe area of Bihac as a

[62] Abshire, Burt, and Woolsey, *Atlantic Alliance Transformed*, 31 and 41–42. Quoted in *New York Times*, 9 June 1991.

* I am grateful to the many U.S., European, and NATO officials who agreed to be interviewed for this article. I would also like to thank Inis Claude, Cheryl Eschbach, Charles Krupnick, David Newsom, Michael O'Hanlon, and Wolfgang Schlör for comments on earlier drafts. Financial support was provided by the United States Institute of Peace, the North Atlantic Treaty Organization, the German Academic Exchange Service, and the University of Virginia.

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major crisis that threatened to damage the alliance irreparably. Others have once again questioned the value of maintaining NATO in view of its inability to resolve the Bosnian conflict.

Although a detailed analysis of these issues is not possible here, several points are in order. First, the gravity of the dispute over Bosnia, like that of most previous intra-alliance "crises," was undoubtedly exaggerated. It did not directly touch upon NATO's principal axis, the U.S.–German relationship. And it was quickly resolved, reflecting both the less than vital nature of the interests involved and the importance NATO members attach to preserving the alliance. Indeed, the dispute was soon overshadowed by renewed attention to the issue of NATO enlargement, surely an unlikely topic of discussion for an alliance in terminal decline.

Second, charges of irrelevance to the central problems of European security, like those leveled before NATO intervened in force, are still premature. The alliance's Balkan troubles have been, at bottom, a consequence of its unique strengths. The forgotten backdrop to these events was the inability of the CSCE, the WEU, and the EU as well as the UN to have a significant military impact on the course of the fighting in the region. Thus NATO's deepening involvement in the Bosnian conflict, albeit belated and halting, reflected its unmatched capacities. No other multilateral security organization was prepared to conduct such a complex, demanding, and potentially controversial military intervention. (The WEU's enforcement of the maritime blockade in the Adriatic, while laudable, was a much simpler operation.) Nor is any of these bodies likely to develop such a capability in the foreseeable future. NATO will remain the organization to which its members and many nonmembers will first look when they deem military operations beyond humanitarian assistance as necessary.

Third, and most fundamentally, disputes and even crises within NATO are bound to occur, as they often have in the past, because the interests of its members do not always coincide. They need not threaten the existence or the overall effectiveness of the alliance, however, as long as it rests on a solid basis of common and complementary interests. This basis may not be as broad or as deep as it was during the cold war, but it remains sufficiently sturdy to cast doubt on predictions of NATO's demise.

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Television Advertising in Election Campaigns

DARRELL M. WEST

Few topics have generated more interest recently than the widespread use of television ads in election campaigns. Commercials have become one of the dominant means of candidate communication in contemporary races. Citizens are bombarded with millions of dollars in spot ads during the political season. The 1990 elections alone generated $203 million in spending on ads, according to an estimate by a broadcasting group.[1] In today's world, it is nearly impossible to imagine campaigns without political commercials.

This research addresses two central questions about television advertisements. First, to what extent do spot ads have an impact on viewers? Much has been made about the ability of campaign commercials to alter public assessments, but as yet there have been few detailed historical studies of this subject.[2] Aside from analyses of ad content, which have addressed changes since television spots initially appeared, not

[1] This figure is taken from Kim Foltz, "$203 Million Was Spent on Political Ads in '90," *New York Times*, 12 February 1991. The estimate was developed by the Television Bureau of Advertising Inc., a nonprofit organization representing the television industry.

[2] Notable exceptions to this statement are Kathleen Jamieson, *Packaging the Presidency*, 2nd ed. (New York: Oxford University Press, 1992); and Edwin Diamond and Stephen Bates, *The Spot* (Cambridge, MA: MIT Press, 1984); and Darrell M. West, *Air Wars: Television Advertising in Election Campaigns, 1952–1992* (Washington, DC: Congressional Quarterly Press, 1993).

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many advertising projects have examined the effects over time of political commercials. This omission makes it difficult to know whether particular results are limited to the election under consideration or represent a more general feature of campaigns.

Second, I ask whether ads are healthy or otherwise justifiable in normative terms. Numerous complaints have been voiced about democracy, ranging from lack of knowledge on the part of citizens to the overall weakness of representative institutions in the United States. However, few developments have raised more concern about the overall health of democracy than the reliance by candidates for public office on paid television advertisements. Critics charge that campaign commercials undermine democracy by shortening public discourse to thirty-second segments. Advertisements also are thought to be problematic because of their capacity for distorting citizen assessments of the candidates.

It is not clear, though, whether these normative dilemmas arise in every electoral setting. I examine advertising in several different types of elections (presidential general elections, presidential nominations, and senatorial general election races) to determine how worried observers should be about television advertisements. By investigating commercials in various campaigns, one can show that political commercials raise difficulties. But not all electoral arenas are equally troublesome. As discussed in this article, the exact impact of ads depends considerably on strategic decisions by the candidates and news media coverage of advertisements.

Rethinking Ads

Substantial strides have been made in documenting media effects on ordinary citizens. Early work showing the limits on the power of mass media has given way to new analysis demonstrating stronger consequences.[3] As television has risen in prominence and paid advertising attracted more attention, analysts have begun to investigate the effects of political commercials. One major concern about television ads has been the impact on voter perceptions of candidate issue positions and personal characteristics. Policy issues long have been crucial to demo-

[3] Ann Crigler, Marion Just, and W. Russell Neuman, "News Patterns, Public Perceptions and Learning" (paper presented at the annual meeting of the American Political Science Association, 30 August–2 September 1990, San Francisco); and Benjamin Page and Robert Shapiro, *The Rational Public* (Chicago: University of Chicago Press, 1991).

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cratic theory because of their role in holding leaders accountable. Considerable time has been spent examining whether citizens know very much about policy matters and whether they incorporate such information in their vote choices. In addition, since many critics of television advertising believe that ads make possible the creation of new images for candidates, attention has been devoted to media campaigns.[4] After Lyndon Johnson's negative campaign against Barry Goldwater and Richard Nixon's successful "selling" in 1968, worry developed concerning the use of television commercials to package candidate traits.

Many observers assume, because so much money is spent on ads, that commercials must be effective in shaping both of these dimensions. In fact, most critiques of political advertising as well as recent legislative bans on certain types of commercial advertising are based on the assumption that television ads are influential in a wide variety of ways. But the scholarly literature reveals that the impact of campaign commercials generally is segmented. The most widely cited body of evidence on issues and images was Thomas Patterson and Robert McClure's landmark study of the 1972 presidential race.[5] Their pathbreaking analysis has been extensively quoted and, in fact, has been reproduced in prominent textbooks. Basically, they found that voters learned more from ads than the news, because the former included some issue content whereas the latter was dominated by the horserace between the candidates.[6]

Recent studies, though, have found that voters do not often cast ballots based on the issues and that candidate evaluations and views about campaign prospects often are decisive.[7] Citizens form a variety of impressions during the course of election campaigns, from views about candidate issue positions and personal characteristics to feelings

[4] Doris Graber, *Mass Media and American Politics*, 2nd ed. (Washington, DC: *Congressional Quarterly*, 1984); and Montague Kern, *30-Second Politics: Political Advertising in the Eighties* (New York: Praeger, 1989).

[5] Thomas Patterson and Robert McClure, *The Unseeing Eye* (New York: Putnams, 1976).

[6] Other authors have studied the impact on issues and images and supported the conclusions of Patterson and McClure. See Gina Garramone, "Issue Versus Image Orientation and Effects of Political Advertising," *Communication Research* 10 (January 1983): 59–76; Ronald Mulder, "The Effects of Televised Political Ads in the 1975 Chicago Mayoral Election," *Journalism Quarterly* (1979): 336–40; and Charles Atkin and Gary Heald, "Effects of Political Advertising," *Public Opinion Quarterly* 40 (Summer 1976): 216–28.

[7] David Gopoian, "Issue Preferences and Candidate Choice in Presidential Primaries," *American Journal of Political Science* 26 (August 1982): 523–46; and Alan Abramowitz, "Viability, Electability, and Candidate Choice in a Presidential Primary Election," *Journal of Politics* 51 (November 1989): 977–92.

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about the campaign prospects of specific candidates. As ads have become more gripping emotionally, affective models dealing with feelings and emotions have been seen as crucial to candidate fortunes.

Favorability is an example of an affective dimension that is important to vote choice. There is a well-documented relationship between voter likes and candidate preferences. Citizens often support candidates whom they like and oppose those they dislike. If both are disliked, they vote for the individual favored the most. Anything that raises a candidate's favorability also increases his or her likelihood of being selected.[8] Candidates devote great attention to presenting themselves in ways that make them appear likable.

The opening up of the electoral process also has brought new factors such as electability and familiarity to the forefront. Electability refers to citizen perceptions of a candidate's prospects for winning the November election. Campaigners who are seen as electable are viewed as having a good chance of becoming president.[9] Since many citizens do not want to waste their vote on hopeless choices, these impressions can increase voter support because of the well known tendency of citizens to support the winner. Familiarity, meanwhile, is important as a threshold requirement. Candidates must become known in order to do well at election time. While this may not have been a crucial consideration in earlier epochs, when campaigners were nationally known, the entry today of candidates who are not well known requires presidential aspirants to use ads to raise their name recognition.

Although these impressions are quite important for voting behavior, past work has not emphasized the impact of commercials on candidate evaluations nor the way in which electoral context shapes citizen responses. Much of the literature on television advertising has focused on a particular kind of electoral setting – presidential general elections. For example, Patterson and McClure's findings were based on Nixon's 1972 landslide victory over George McGovern. The apparent absence of image effects in the two and one-half month span of that campaign may not be surprising in light of the lopsided nature of that race and the fact that by the time of the first survey in September, public perceptions of the two candidates were fairly well fixed.

[8] Stanley Kelly and Thad Mirer, "The Simple Act of Voting," *American Political Science Review* 68 (June 1974): 572–91. However, National Election Study coding of likes and dislikes allows for issue oriented material as well as affective qualities.

[9] Abramowitz, "Viability, Electability, and Candidate Choice in a Presidential Primary Election," 977–92; and Larry Bartels, *Presidential Primaries* (Princeton, NJ: Princeton University Press, 1988).

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However, as Patterson and McClure themselves have pointed out, other electoral settings display greater opportunities for advertising effects. Presidential nominating affairs and Senate races have gone through great changes in recent years, and many of these developments have increased concern about advertising.[10] These contests often have unfamiliar contenders vying for votes before an electorate that has few prior beliefs about the candidates. Because elections have become more fluid than in the past, less structured by partisanship and more likely to display volatility in voter preferences, ads may have consequences in terms of favorability, electability, and familiarity. The rise of an unrooted electorate in the contemporary period and development of a campaign structure that encourages less widely known candidates to run make citizen assessments of campaign prospects a very important area of inquiry.

The Study of Advertising

This research examines television advertising from 1972 to 1990, using several different types of information. Sixteen public opinion surveys (both panel and cross-sectional) were used to explore viewer reactions to campaign ads since 1972.[11] For an analysis of media coverage, I

[10] Nelson Polsby, *Consequences of Party Reform* (New York: Oxford University Press, 1983).

[11] Patterson and McClure conducted a 1972 general election panel survey in Syracuse, New York in which three sets of personal interviews were conducted prior to election day: September (N = 731), October (reinterviews with 650 people), and early November (N = 650). A 1974 National Election Study explored advertising in Senate campaigns, using a postelection nationwide questionnaire of 1,575 respondents. In 1976, Patterson conducted a panel study of Los Angeles, California and Erie, Pennsylvania designed to investigate the nominating and general election phases of the campaign. Interviews were conducted in February (N = 1,002), April (N = 897 respondents of whom 772 had been interviewed in the earlier wave), June (N = 907 with 720 coming from the original panel), and October (N = 907). CBS/*New York Times* conducted a national pre- and post-election survey between 31 October and 2 November 1984 with 1,994 respondents (1,794 were reinterviewed on 8 to 14 November after the election). In addition, CBS/*New York Times* conducted several polls in 1988 that included relevant items: a regional survey of Super Tuesday primary states from 28 February to 2 March (N = 2,251); a 21 to 24 October questionnaire (N = 1,827); a pre-election survey from 2 to 4 November (N = 1,977), and a postelection interview from 10–15 November with 1,627 of the pre-election respondents. The 1990 Rhode Island survey was sponsored by the A. Alfred Taubman Center for Public Policy and American Institutions at Brown University and was designed to explore the Senate race between Claiborne Pell and Claudine Schneider. The telephone pre-election poll was a statewide probability sample of 414 likely voters aged 18 or above undertaken 16–19 September 1990. Responses were weighted by sex and age in proportion to actual census numbers. The 1990 North Carolina Senate election study was conducted by the School of Journalism and the Institute for Research in Social Science at the University of North Carolina at Chapel Hill. From 28–31 October 1990, 833 randomly selected adult residents of North Carolina households were interviewed by telephone. The data were weighted for household size to correct for the undersampling of members of large households.

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also examined *New York Times*, *Washington Post*, and CBS Evening News stories about campaign ads.[12]

There is a long-running controversy regarding the respective merits of survey versus experimental approaches to advertising effects. Experiments are much clearer research designs for isolating causal linkages and specifying communications processes. However, they ignore fundamental features of the political context and are limited in terms of generalizability. There also is no way to develop retrospective experiments, which would reconstruct viewer reactions to the historic ads of earlier years. Because so much of voter reactions depends on the strategic context of candidate decisions and free media coverage, it is hard to imagine a research strategy relying upon experiments that could realistically go back and simulate voter assessments of the 1972 Nixon-McGovern race, the 1976 Jimmy Carter nomination surge, or the 1988 George Bush-Michael Dukakis campaign.

One must be cautious, though, in using public opinion surveys. Even when supplemented with independent indicators, surveys are limited in their reliance on recall data about television advertising. Recall items are dependent on human memory for measurement of ad exposure. Scholars have pointed out the difficulties of these indicators in regard to the evening news and the need to develop other alternatives.

However, there are conceptual reasons why exposure variables should be less problematic with ads than with the evening news. Viewers have difficulty remembering whether they saw the evening news because of the large number of stories shown, the consistent format of the news, and the fact that different newscasts over time often look alike to

[12] To investigate the coverage of campaign ads in news stories, I undertook an analysis of campaign stories in the *New York Times* from 1952 to 1988, the *Washington Post* from 1972 to 1988, and CBS Evening News from 1972 to 1988. Research assistants went through the *Times* and *Post* Indexes of presidential election years and located stories about advertising. The number of stories appearing about political ads were counted and for purposes of accuracy double-checked. Press coverage was divided between the nominating period, which was defined as 1 January to the time of the California primary in each election year, and the general election, which ran from 1 September to Election Day. The study of television news proceeded along similar lines. Using the Vanderbilt Television News Index and Abstracts, which summarizes news stories for each network, reviewers tabulated the number and content of stories about political commercials which appeared Monday through Friday for the nominating process (1 January until the California primary in June) and general election (1 September to Election Day) each presidential year. Overall, there were 261 articles about political commercials in the *New York Times*, 197 pieces in the *Washington Post*, and 121 stories on the CBS Evening News. The variations in the total number of stories between newspapers and television reflects obvious differences in the time periods studied and scope of the coverage. In this article, I report the number of ad stories for CBS. The trend toward increasing coverage was similar for the *New York Times* and *Washington Post*.

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viewers. In contrast, ads are more easily remembered because they are novel, entertaining, and distinctive in nature. They also are idiosyncratic to particular elections, which facilitates viewer recall.

A comparison of ad results based on recall and program logs reveals no important differences. Patterson and McClure developed an innovative method for measuring ad exposure based on programming logs derived from prime-time television viewing. On a program-by-program basis, they asked respondents to indicate which shows had been watched between 7 and 11 p.m. each evening. The analysis of ads viewed based on these program logs can be compared to recall using the following four-point item from Patterson and McClure: "How often have you heard about the presidential campaign from the following source? Television advertisements: many times, several times, one or a few times, or not at any time?"[13]

As shown in Table 1, the substantive results between analyses derived from recall measures and program logs were virtually identical in 1972, when both measures were available. This table presents a regression analysis of ad exposure on impressions of Nixon and McGovern, controlling for various political and demographic characteristics. A positive coefficient for ads indicates a direct relationship between seeing ads and believing Nixon was likely to honor commitments to other nations. It is clear that using either measure, ad exposure had a significant, positive effect on views about Nixon's top issue of honoring commitments to other nations and his electability to the presidency. There were no significant ad effects with either measure for McGovern's top issue of withdrawing from Vietnam or agenda-setting on foreign affairs. If anything, ad recall items were a conservative test, because they generally showed weaker significance values than measures derived from program logs. This suggests that traditional scholarly critiques about the limits of media self-reports are not very accurate in regard to campaign advertisements.

Citizen Knowledge and Candidate Evaluations

Elections in the 1970s and 1980s offer an interesting opportunity to study the impact of advertising on ordinary citizens. Table 2 presents

[13] For the other years included in this analysis, I also developed four-point ad viewing scales which measured ad exposure and frequency or attentiveness of viewing. For example, the 1974 National Election Study asked: "During the recent campaign did you see any political advertisements on television about the candidates running for the U.S. Senate" (yes or no) and "Would you say you paid close attention, some attention, or no attention to these advertisements?" These questions

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TABLE 1

Ad Effects Using Recall and Program Logs

	Nixon Honor Commitments		*McGovern Vietnam Withdrawal*	
	Recall	*Logs*	*Recall*	*Logs*
Ads	.10 (.06)[a]	.30 (.12)[b]	.06 (.06)	.08 (.14)
Party	.04 (.02)[a]	.04 (.02)	−.01 (.03)	−.02 (.03)
Education	−.01 (.01)[a]	−.02 (.01)[b]	−.02 (.01)[c]	−.02 (.01)[c]
Age	.00 (.00)	.00 (.00)	.00 (.00)	.00 (.00)
Sex	−.01 (.10)	−.01 (.10)	−.07 (.11)	−.05 (.11)
Ideology	−.00 (.02)	−.00 (.02)	.03 (.03)	.03 (.03)
Race	.68 (.28)[b]	.62 (.28)[a]	.41 (.31)	.41 (.31)
Interest	.03 (.04)	.04 (.04)	.05 (.04)	.05 (.04)
Media exposure	−.05 (.02)[a]	−.04 (.02)[a]	−.06 (.03)[a]	−.06 (.03)[a]
Constant	1.50 (.49)	1.78 (.52)	2.10 (.56)	2.00 (.58)
N	342	345	345	348
	Nixon Electability		*Agenda-setting Foreign Affairs*	
	Recall	*Logs*	*Recall*	*Logs*
Ads	.13 (.06)[a]	.48 (.14)[c]	.07 (.07)	.05 (.15)
Party	.16 (.03)[c]	.15 (.03)[c]	.02 (.03)	.02 (.03)
Education	−.01 (.01)	−.02 (.01)[a]	−.01 (.01)	−.01 (.01)
Age	.00 (.00)	.00 (.00)	.00 (.00)	.00 (.00)
Sex	.14 (.12)	.15 (.11)	.35 (.12)[b]	.34 (.12)[b]
Ideology	.06 (.03)[a]	.07 (.03)[a]	.04 (.03)	.04 (.03)
Race	1.75 (.33)[c]	1.65 (.32)[c]	−.32 (.36)	−.30 (.36)
Interest	.04 (.05)	.05 (.05)	.06 (.05)	.07 (.05)
Media exposure	.03 (.03)	.03 (.03)	−.01 (.03)	−.01 (.03)
Constant	−.75 (.59)	−.18 (.60)	4.53 (.63)	4.34 (.64)
N	343	346	345	350

[a] $p < .05$.

[b] $p < .01$.

[c] $p < .001$.

Source: 1972 Patterson and McClure surveys.

Note: Table entries are unstandardized regression coefficients with standard errors in parentheses. Estimates are based on ordinary least squares, with the exception of the agenda-setting item, which is derived from logistic regression because the dependent variable is dichotomous.

were combined to form the four categories of saw no ads, saw ads but paid no attention, saw ads and paid some attention, and saw ads and paid close attention to them. The results based on these four-point scales are similar to those for dichotomous exposure/nonexposure items.

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TABLE 2

Overall Evaluations of the Candidates (in percentages)

	Recognition	*Favorability*	*Electability*
1974 Senate	52	Dem 34 Rep 24	–
1990 Senate			
RI Dem	84	75	65
Rep	78	66	17
NC Dem-Rep	92	–	–
Presidential General Elections			
1972 Dem	–	–	1
Rep	–	–	50
1976 Dem	92	35	37
Rep	95	32	29
1984 Dem	82	38	–
Rep	90	66	–
1988 Dem	74	42	15
Rep	75	55	85
Presidential Nominations			
1976 Carter	77	42	52
Udall	37	25	1
Ford	93	34	49
Reagan	89	27	14
1988 Dukakis	40	44	39
Gore	38	34	12
Bush	67	49	62
Dole	56	44	30

Note: These figures represent the percentage of respondents recognizing the candidate, evaluating him favorably, and seeing him as electable in November. The North Carolina recognition number is based on familiarity with the race.

evaluation ratings, and it is clear that respondents were able to distinguish the prospects of various candidates. The average recognition across general elections was 85 percent, significantly higher than the 62 percent for nominating candidates and 52 percent for Senate contenders in 1974.[14] The 1990 Senate races in Rhode Island between Claiborne Pell and Claudine Schneider and in North Carolina between

[14] In the National Election Studies, candidate recognition was a dichotomous variable (heard/not heard) based on "Many people tell us they have not heard of some of the names on this list. As I read each name, please tell me whether or not you have ever heard of this person." In the CBS and 1990 Rhode Island surveys, candidate recognition were based on "Is your opinion of (candidate) favorable, not favorable, undecided, or haven't you heard enough about (candidate) yet to have an opinion?" Recognition was a two category variable in which those saying they were favorable or unfavorable were coded as recognizing the candidate and those who were undecided or said they hadn't heard enough were classified as not recognizing the candidate. The North Carolina question gauged citizen familiarity with the Senate race: "How much do you think you know about the Gantt-Helms Senate race—a lot, some, only a little, or nothing at all?"

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Harvey Gantt and Jesse Helms were exceptions to this pattern, because with the exception of Gantt, each featured very visible individuals with high recognition levels. There also have been extensive variations in citizen perceptions of candidate favorability and electability.[15] Of recent nominees, Ronald Reagan has been the most well liked, while Gerald Ford was the least well liked. The average rating for general election nominees was 45 percent, higher than the 37 percent for the nominating process, and 29 percent for Senate candidates in 1974.[16] In regard to electability, McGovern in 1972 not surprisingly was the candidate seen as least electable, while Bush was named the most electable nominee by voters.

Voters furthermore have a sense of policy issues and personal traits associated with each candidate. Table 3 lists the issues and traits identified by voters on surveys with each campaigner.[17] There were interesting

[15] The favorability item in the National Election Study was based on 0 to 100 feeling thermometer scales for each candidate. In the CBS surveys, candidate favorability was based on "Is your opinion of (candidate) favorable, not favorable, undecided, or haven't you heard enough about (candidate) yet to have an opinion?" Favorability was measured as a three category item (favorable, undecided, not favorable). In the National Election Study, campaign viability was measured by "As you know, each party will have a convention this August to nominate someone to run for President. Now, thinking about these nominating conventions, who do you think is likely to win the Democratic nomination for President? We will be using a scale which runs from 0 to 100, where 0 represents no chance for the nomination, 50 represents an even chance, and 100 represents certain victory. You may use any number between one and one hundred. What do you think (candidate's) chances are?" A similar 0 to 100 scale was used to examine electability in the fall general election. Electability in the CBS and 1990 Rhode Island survey was measured as a dichotomous variable (electable/not electable) by the question "Regardless of which candidate you support [for the nomination], which of these (Democratic/Republican) candidates do you think would have the best chance of winning the election in November [if he were nominated]?"

[16] The 1990 Rhode Island Senate race again was an exception as both incumbents were very well liked. Pell had a 75 percent favorability rating, while Schneider had a 66 percent rating in September.

[17] In 1972 and 1976, respondents were asked to place candidates on a seven-point scale indicating where the individual stood on the issue and personality trait, respectively. The 1988 issue questions were the following: "Are imports of Japanese goods creating unfair competition for U.S. industries, or are Japanese imports really being blamed for U.S. industrial problems?" "Right now, would you say the United States is superior in military strength to the Soviet Union, is about equal in strength, or is not as strong as the Soviet Union?" "When it comes to the situation in Central America, are you more worried about the United States getting involved in a war there, or more worried about a communist takeover in that area?" "Do you think the government should do more to help blacks, or has it done enough, or has it done too much already?" "In order to reduce the size of the federal budget deficit, would you be willing, or not willing to pay more in federal taxes?" Candidate qualities were measured by three items: "Do you think that (candidate) says what he really believes most of the time or does he say what he thinks people want to hear?" "Do you think that (candidate) has strong qualities of leadership?" (asked of Republicans only). "Regardless of which candidate you support for the nomination, which of these Democratic candidates do you think cares the most about the needs and problems of people like yourself?" (asked of Democrats only).

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TABLE 3

Perceptions of Candidate Issue Positions and Personal Traits

		Top Issue	*Top Trait*
1974 Senate			
	Dem	Equal rights	–
	Rep	Urban unrest	–
1990 Senate			
RI	Dem	Education	Cares about people
	Rep	Environment	Cares about people
NC	Dem	Oil drilling	–
	Rep	Death penalty	–
Presidential General Elections			
1972	Dem	Immediate Vietnam withdrawal	Government experience
	Rep	Commitment to other nations	Government experience
1976	Dem	Welfare spending	Ability
	Rep	Defense spending	Trust
1984	Dem	–	–
	Rep	Budget deficit	Cares about people
1988	Dem	Help blacks	Attacking
	Rep	Economy	Attacking
Presidential Nominations			
1976	Carter	Tax cuts	Leadership
	Udall	Guaranteed jobs	Personality
	Ford	Defense spending	Trust
	Reagan	Defense spending	Trust
1988	Dukakis	Military	Says what he believes
	Gore	Japanese competition	Cares about people
	Bush	Deficit reduction	Leadership
	Dole	Military	Leadership

Note: This list consists of those issues and traits mentioned on surveys as being associated with each candidate. Blanks mean that no item was asked for that particular election.

contrasts over time in the types of matters mentioned by respondents. Foreign policy considerations were prominent in 1972 for McGovern and Nixon, while domestic matters dominated thereafter. There also were interesting shifts in the types of personal traits identified with candidates. This period began in 1972 with debates over candidate experience and ended with the chief personal traits cited being the propensity to attack one another and performance during the campaign.

Of course, it remains to be seen whether political commercials have any effect on these perceptions, especially after controls for a number of mediating factors are introduced into the analysis. For example, the prior beliefs of citizens should make a difference in how people respond to ads. It is well established that viewers filter political events through the selective lens of partisanship and ideology. Liberals and

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conservatives bring different values and beliefs to the political arena and therefore are likely to see the same event in very different ways. In addition, advertising effects may be linked to the different types of people most likely to see television ads. Media exposure often varies with educational attainment, race, age, and sex, and one needs to look at ad effects controlling for these factors. Finally, political interest and general media exposure may make a difference. Even if views of the candidates are influenced, one must check to make sure that the effects are not merely an artifact of general political awareness, as opposed to television advertisements.

Even after these other factors were introduced, though, ads still had a significant impact on citizen learning. Table 4 presents the results of a series of regression analysis for evaluations which at the bivariate level displayed significant ad effects.[18] Seeing Nixon ads in 1972 made viewers more likely to see him as wishing to uphold commitments made to other nations. The same phenomenon emerged in the 1988 nominating process. During that year, exposure to ads moved people closer to the issue positions of Dukakis (the military), Albert Gore (unfair competition from Japan), and Bush (deficit reduction).

However, ad effects were not limited to learning about policy matters. If that were the case, critics would have much less ammunition against political commercials. Instead, ads also had an impact on candidate images, favorability, and electability that was at least as strong as on issue positions. Gore and Bush were able to increase their favorability ratings during the 1988 nominating campaign through ads, as were Senate candidates in 1974 and 1990.[19] Political commercials furthermore had an impact on perceptions of electability. The strongest impact came with Dukakis in the 1988 presidential nominating process, but also were present in regard to Nixon in 1972 and Carter in 1976. In addition, candidates were able to mold public perceptions of candidate

[18] One exception was the 1988 CBS Super Tuesday study in the nominating process, which did not include a question on free media exposure. I also ran several checks to make sure that my analysis was not hopelessly contaminated by projection effects. Bivariate correlations between candidate choice and the 1972 to 1990 ad exposure scales reveal that viewers do not merely project their personal preferences onto the exposure measures. In general, the correlations were quite small. In addition, the most important multivariate models were reestimated with a control for candidate choice. There were no substantive differences in the results.

[19] The multivariate model for the 1990 Rhode Island Senate race controlled for party identification, education, age, and sex only. The 1990 North Carolina poll did not include a measure for political interest.

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TABLE 4

Ad Effect on Citizen Perceptions, Controlling for Party Identification, Education, Age, Sex, Race Ideology, Political Interest, and Media Exposure

	Ad Coefficient (SE)	*N*
Favorability		
Senate Dem (1974)b	.17 (.05)[c]	693
Senate Rep (1974)b	.18 (.05)[c]	666
Carter (1976 GE)	.07 (.07)	538
Gore (1988 Nom)	.09 (.03)[b]	426
Bush (1988 Nom)	.11 (.04)[c]	369
Pell (1990 Senate)	.05 (.03)[a]	311
Schneider (1990 Senate)	.10 (.04)[b]	286
Electability		
Nixon (1972 GE)	.13 (.07)[a]	343
Carter (1976 Nom)	.16 (.09)[a]	333
Dukakis (1988 Nom)b	.17 (.04)[c]	560
Bush (1988 Nom)b	.05 (.05)	425
Top issue		
Nixon (1972)	.10 (.05)[a]	342
McGovern (1972)	.06 (.06)	345
Dukakis (1988 GE)	.07 (.02)[c]	1082
Bush (1988 GE)	.07 (.01)[c]	1167
Dukakis (1988 Nom)	.06 (.03)[a]	597
Gore (1988 Nom)	.09 (.02)[c]	515
Bush (1988 Nom)	.04 (.02)[a]	374
Helms (1990 Senate)	.03 (.01)[a]	471
Top trait		
Carter (1976 GE)	.14 (.06)[a]	524
Carter (1976 Nom)	.05 (.06)	329
Dukakis (1988 Nom)	.02 (.04)	489
Gore (1988 Nom)	.06 (.01)[c]	546
Bush (1988 Nom)	.05 (.02)[a]	348

[a] $p < .05$.

[b] $p < .01$.

[c] $p < .001$.

Note: Table entries are unstandardized regression coefficients with standard errors in parentheses. Effects of control variables are not shown. Candidates marked with a "b" are based on logistic regression estimates because the dependent variables are dichotomous.

traits. Carter ads made citizens more likely to see him as an able leader, while Gore ads made people more likely to say he cared about people.

The Media Connection

There are a couple of possibilities that help us understand the effects just described. One interpretation is to attribute the results to the content of commercials, on the grounds that if voters see ads extolling

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particular virtues, they will be more likely to view candidates in those terms. In fact, a review of campaign histories as well as videotapes of actual ads reveals that image and issue effects generally corresponded to portraits presented in paid advertisements.[20] For example, Gore's ads featured appeals trumpeting his ability to represent the little person. Not surprisingly, in light of this message, viewers who saw his ads were more likely to claim he was a caring individual. Bush also was successful in using commercials emphasizing his political independence to convince people he was a straight-shooter who said what he believed.

This linkage mechanism, though, is not very persuasive for arguments about electability. The study of campaign histories and ad videotapes shows that few candidates in 1988 ran commercials directly proclaiming their winnability. No one really made the ability to win the general election a central part of his paid advertisements. One instead must look toward media coverage of candidate ads to understand the electability puzzle.

Ideally, what is needed for research on the free/paid media connection are new measuring approaches that distinguish three paths of influence: general news exposure, ads viewed during news broadcasts, and ads seen independently of the free media. Unfortunately, questions about the embedding of ad coverage in the nightly news have not been asked. But one can examine the content of ad news coverage as well as more detailed statistical models regarding electability to gain a fuller appreciation of how the media affect citizen impressions.

There has been very limited attention to how journalists cover television ads. This inattention is problematic, because there has been a substantial increase in television stories dealing with political advertising since 1972. Overall, during this period, there were 121 CBS stories about political commercials. In 1972, only seven stories about ads appeared in the nominating process and four in the general election. In 1976, there were fourteen stories on CBS in the spring and five in the fall. However, the numbers started to rise in 1980 and reached their zenith in 1988 with twenty-nine in the nominating process and twenty-one in the general election. Commercials that are rebroadcast for free during the news not only save the candidate money and reach a huge audience, they also evoke great credibility on the part of viewers

[20] Several excellent videotapes of television ads are available, such as "The Classics of Political Television Advertising" from *Campaigns and Elections* and "Ads of 1988" from L. Patrick Devlin. Also see L. Patrick Devlin, "Contrasts in Presidential Campaign Commercials of 1988," *American Behavioral Scientist* 32 (March/April, 1989): 389–414.

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because of the general believability of journalistic outlets. Ads furthermore shape campaign themes and overall storylines about the candidates.

To investigate television coverage, I examined all the CBS stories about advertising which appeared between 1972 and 1988. Two features were analyzed: the content of the ad reference itself within the news story; and the general thrust of the news stories in which the ad was discussed. There were interesting differences between ad descriptions contained in news stories and the content of the news stories themselves. The major contrast concerned the tendency of reporters fascinated with the horserace to convert substantive ad messages into news stories about campaign prospects or strategies. Ads included in news reports tended to involve specific policy matters (43 percent), domestic performance (29 percent), personal qualities (14 percent), and the campaign (14 percent).

In contrast, most of the news stories about ads dealt overwhelmingly with the campaign (69 percent), a figure similar to that reported by Michael Robinson and Margaret Sheehan for general coverage in 1980.[21] These stories involved discussions about how particular ads fit strategic goals of the campaign (31 percent) or affected the electoral prospects of the candidate (38 percent). For example, CBS broadcast a story on 12 February 1988 about a Dukakis ad on the economy, but analyzed it in terms of its contribution to the candidate's campaign strategy. News reports placed much less emphasis on personal qualities (10 percent), domestic performance (3 percent), or specific policy statements (14 percent) than was the case with ads themselves.

The power of the media can be seen in Table 5 through full models of impressions about the electability of Carter and Dukakis. As shown previously, ad exposure was linked to beliefs about the electability of each candidate. But general media exposure and political interest furthermore were important to views about campaign prospects. This suggests that people who see a lot of ads also watch enough news to get notions of electability there.

Change during the Campaign

Ad effects do not just materialize at the end of campaigns. Instead, they develop over the course of the race based on strategic moves by

[21] Michael Robinson and Margaret Sheehan, *Over the Wire and On TV* (New York: Russell Sage, 1983).

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TABLE 5

Models of Carter and Dukakis Electability

	Carter Electability b (SE)	*Dukakis Electability b (SE)*
Ads	.16 (.09)[b]	.17 (.04)[d]
Party	.04 (.06)	−.00 (.04)
Education	−.08 (.07)	−.09 (.04)[b]
Age	.08 (.12)	−.05 (.05)
Sex	−.12 (.22)	.03 (.09)
Ideology	.01 (.09)	.03 (.06)
Race	−.64 (.78)	.10 (.11)
Interest	.11 (.12)	.15 (.10)[a]
Media exposure	.15 (.10)[a]	—
Constant	3.37 (1.19)	5.45 (.36)
N	333	560

[a] $p < .10$.
[b] $p < .05$.
[c] $p < .01$.
[d] $p < .001$.

Note: Table entries are unstandardized regression coefficients with standard errors in parentheses for Carter and logistic regression estimates with standard errors in parentheses for Dukakis. The free media exposure question was not asked in the 1988 CBS Super Tuesday study.

each contender. Panel surveys are designed to study the dynamics of attitude change. Because they are based on reinterviews with the same people at various points during the race, they are an ideal way to look at ad effects. Both in 1972 and 1976, panel studies were conducted that enable researchers to investigate the impact of ads on changes in candidate assessments. There were few changes in people's views of issues and traits in 1972 or 1976. No change took place between September and October regarding people's view of Nixon's likelihood of maintaining commitments to other nations. There was a slight gain of 5 percentage points between October and November. Similarly, there were few changes in views of Carter's position on welfare spending in 1976 or perceptions of personal traits in 1972 or 1976.

However, there were substantial alterations in assessments of Carter electability in the 1976 nominating process. As indication of the momentum that developed for the Georgia governor, 8 percent saw him as electable in February, 52 percent in April, and 74 percent in June. There were improvements of 44 percentage points between the first two time points and 22 points between April and June. Befitting the stability of the 1972 general election, Nixon saw no significant change in electability between October and November.

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In examining the extent to which these impressions were influenced by campaign ads, it is apparent that ad exposure was important at various stages in the process. It was critical in the early stage of the nominating campaign to those who switched from not believing to believing that Carter was electable. Between April and June, though, ad exposure displayed a stronger reinforcement than conversion effect. After Carter's actual electability was established, seeing ads made people more likely to retain their view of Carter electability.[22]

The Electoral Consequences of Electability: 1988

The 1988 Democratic nominating campaign offers an interesting opportunity to investigate the electoral effects of advertisements. The Democratic process was a wide-open, seven-candidate affair with no well-known front-runner until Dukakis began to forge ahead at the time of the 8 March Super Tuesday primaries in the group of southern states holding elections on the same day. The victories by Dukakis were vital to the sense of inevitability that began to surround his candidacy. Prior to this time, Dukakis had put together a strong organization and had been very successful in terms of fundraising. But it was the voter and delegate support expressed at the time of Super Tuesday that began to propel him toward the nomination. As summarized by Jack Germond and Jules Witcover right after Super Tuesday, "Dukakis was now clearly the front-runner, in terms of both the number of delegates he had captured and the strength demonstrated in winning not only in the Northeast but also in the Far West and South."[23]

A two-stage path model of the Dukakis vote during the critical period of the 1988 Super Tuesday primaries can be used to deal with the possibility of reciprocal relations between candidate preferences and views regarding electability.[24] Media analyses often are muddied by

[22] Ad exposure increased the percentage of individuals seeing Carter as electable by 25 percentage points from February to April. The same was true from April to June for those individuals who retained the belief that Carter was electable.

[23] Jack Germond and Jules Witcover, *Whose Broad Stripes and Bright Stars?* (New York: Warner Books, 1989), 290.

[24] This analysis relied upon a two-stage estimator to examine the possibility of nonrecursive relations. Two-stage path analysis purges key factors of contaminating associations before the modeling takes place. Ideally, one wants to find instruments exogenous to the relationships being studied. In practice, it is difficult to find pure measures. Iyengar and Kinder pioneered a promising technique in their study of news agenda-setting on inflation, unemployment, and energy. Since the link between public concern for a particular issue and news coverage can be reciprocal, they used a two-stage estimator in which concern for issue X (inflation) was measured through concern for issues Y (unemployment) and Z (energy) as well as presidential speeches. Following this example, I measured the

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the fact that causal arrows can point in both directions at once. Roy Behr and Shanto Iyengar examined this issue in their study of agenda-setting through television news. Even though they concluded that the assumption of recursivity in agenda-setting is on "solid ground," this matter continues to be a concern in the media area.

Even after key variables were purged of joint effects, electability clearly was quite decisive for Dukakis's vote. The more electable he was seen, the more likely voters were to support him. But other factors—race and sex—also were directly linked to support for Dukakis. Race was important because of the presence of Jesse Jackson in the contest. There was a clear polarization in voter support with Jackson receiving the vast majority of the black vote, and Dukakis and Gore dividing the white vote. Sex furthermore had a strong effect on support for Dukakis, with women being more likely to vote for him than men.[25]

Dukakis's advertising furthermore had indirect consequences for the vote through views regarding electability. The strongest predictor of electability in this model was exposure to spot commercials. More so than race, sex, or partisanship, those who saw ads prior to Super Tuesday were more likely to see the Massachusetts governor as the most electable Democrat.[26]

These results hold up when strategic considerations are incorporated into the model. The major competition for Dukakis among white voters on Super Tuesday was Gore. As a senator from Tennessee, Gore had a home region advantage in southern states. Other than Jackson, whose voting base clearly was among blacks, Gore was the major obstacle to Dukakis's nomination drive at the time of Super Tuesday. The analysis shows that the electability link just described remains once ads of competing candidates were included in the path model.[27] Seeing

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electability of Dukakis through views about the electability of his competitors for the Democratic nomination. The Dukakis nomination vote was modeled through support for opposing candidates. I also experimented with other specifications of these instruments and found similar results. For a discussion of two-stage models, see Shanto Iyengar and Donald Kinder, *News That Matters* (Chicago: University of Chicago Press, 1987); and Roy Behr and Shanto Iyengar, "Television News, Real-World Cues, and Changes in the Public Agenda," *Public Opinion Quarterly* 49 (Summer 1985): 38–57.

[25] The direct effect of electability on the vote in this two-stage analysis was .47 ($p < .001$). Other coefficients which were significant included race (.13; $p < .001$), party identification ($-.05$; $p < .01$), and sex ($-.11$; $p < .01$).

[26] The best predictors of views regarding electability were exposure to ads (.18; $p < .01$) and party (.06; $p < .01$). The significant relationship for advertisements remains even after preferred candidate choice is included in the model as a control factor.

[27] This study treats the control factors as endogenous to the analysis of advertising. It is possible that attitudes and background characteristics dictate ad exposure. To make sure this was not the case, I reran this model with party, education, age, sex, ideology, and race being exogenous to

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ads for the Massachusetts governor was positively correlated with feeling Dukakis was the most electable Democrat (coefficient = .20; $p < .001$ for Dukakis and −.06; not significant for Gore). Electability also had a clear impact on the vote (coefficient = .47; $p < .001$). Spot commercials thus were important even when strategic interactions were factored into the model.

Learning the Wrong Things

The findings reported here help scholars understand the way in which ads influence viewers and the more general impact that mass media have in contemporary politics. Much has been made in recent years about the ability of television advertising to shape public impressions. While some attribute educational significance to these effects, not all of the learning is substantive in nature. Ads have major consequences for citizen views about candidate recognition, favorability, and electability, especially in presidential nominating campaigns. Both Carter and Dukakis during the nominating process reaped substantial gains in perceptions of electability as did Nixon in the 1972 general election. The spot ads for Dukakis, along with favorable coverage from the free media, strong organization, and successful fundraising, helped create the aura of inevitability that guided him successfully through the 1988 primaries.

The connection between ads and recognition/favorability can be problematic under certain circumstances, that is, distorting people's views about candidate qualities or taking advantage of the low visibility of particular candidates. But it is the tie between commercials and campaign prospects that may be the most troublesome facet of modern advertising. Democratic elections require citizens to make decisions that represent their substantive self-interests. One of the most persistent criticisms about contemporary campaigns has been the casting of ballots because of winnability. If voters are choosing candidates based on fleeting impressions of campaign prospects, it disrupts the linkage function of the election process.

This power is all the more important because it occurs via a mode of communication directly controlled by candidates. Unlike network

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advertising. The regression estimates for these predictors ranged from .03 to .07 and overall explained only 2 percent of the variation in exposure to campaign advertisements.

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coverage, where campaigners are at least technically dependent on people outside the campaign for favorable coverage, ads are developed within the organization (except for those produced by independent organizations). The fact that campaigners have the means to influence electoral dynamics and impressions of themselves makes political ads a powerful strategic tool.

These problems are compounded because ad effects are most likely to occur in areas where the public is most vulnerable. In 1988, for example, the effects of ads came among less visible candidates and with contenders who were skilled in the use of advertising. During the nominating process, the effects on recognition and electability were stronger on the Democratic than Republican side. This undoubtably reflected the wide-open status of the Democratic nominating process and number of candidates who were not well known. In a situation where the Democratic candidates were unflatteringly described as the Seven Dwarfs, the lack of visibility may have enabled their advertising to produce more gains in terms of recognition and knowledge than was true for the GOP. Republicans, after all, had two well-known candidates (Bush and Robert Dole), and by the time of Super Tuesday, a clear front-runner.

Strategic dimensions also were important in explaining differing effects among the candidates, particularly the ones between Bush and Dukakis in the general election as well as Gore and Dukakis in the nominating contest. The Bush ad campaign successfully painted his opponent as out of the political mainstream and, therefore, as neither a desirable nor electable alternative. Meanwhile, according to J. Gregory Payne, John Marlier, and Robert Baukus, Gore ran a media advertising campaign emphasizing populist appeals and an image as a "champion of the oppressed."[28] Dukakis, on the other hand, talked about personal competence, integrity, experience in government, and the "Massachusetts miracle."

The fact that candidates in an open electoral system exercise some strategic control over what works with voters further exacerbates the problems of campaign advertising. By the messages they develop and the targeting they employ, campaigners can influence what is effective

[28] J. Gregory Payne, John Marlier, and Robert Baukus, "Polispots in the 1988 Presidential Primaries," *American Behavioral Scientist* 32 (March/April 1989): 375.

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with citizens. When combined with coverage from the free media that reinforces the candidate message, political aspirants have a great deal of influence over how citizens view them. Ads therefore can be an important tool for candidates, albeit one that is not always positive from the standpoint of representative democracy.

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Ethnic Diasporas and U.S. Foreign Policy

YOSSI SHAIN

The American polity is unique in its insistence on political rather than ethnic criteria for inclusion and loyalty. American patriotism is defined as the devotion to liberal-democratic and humane principles and not to an ethnically-based, cultural community. In fact, ethnic pluralism in the United States is by now part of the American creed of "Celebrated Diversity," to use Lawrence Fuchs's phrase. While at the turn of the twentieth century many citizens regarded the "hyphenated American" with contempt and distrust, now hyphenation is prized. The U.S. lack of emphasis on the organic community and the growing legitimation of ethnicity in public life allow members of American ethnic groups to identify with their county of origin. Indeed, many U.S. diasporas – mainly migrants and their descendants who are linked by ties of origin, ethnic association, or nationality – feel a sense of kinship with the land of their ancestors and share an abiding interest in the politics of their ancestral country or symbolic homeland. Political actors abroad have increasingly appreciated and even encouraged the political activity of their compatriots on their behalf. The ties to the homeland are also reinforced by modern transportation and communication. The growing number of Americans who keep close contact

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with their countries of origin have rendered some U.S. diasporas truly transnational.[1]

In the era of multiculturalism, when official America no longer imposes cultural assimilation upon its members, diasporic elites are less and less inhibited by charges of disloyalty when promoting ancestral identities among their constituencies. Moreover, the openness of the American political system to ethnic politics has allowed many newly organized diasporas to acquire a meaningful voice in U.S. foreign policy, especially on issues concerning countries of origin or symbolic homelands. Alongside the more established groups of Greek, Armenian, Irish, or Jewish descent, the more recently empowered diasporas of African, Arab, Cuban, Filipino, Haitian, Korean, and Mexican origin have discovered that by focusing on political causes in their countries of origin they are often better positioned to mobilize their political communities for empowerment inside the United States.

Nathan Glazer and Daniel Patrick Moynihan have observed as early as 1975 that ethnic influences have become, "the single most important determinant of American foreign policy."[2] Yet, the ability of U.S. diasporas to affect American foreign policy toward their homeland has grown (and is likely to expand) because of the greater complexity in distinguishing between America's friends and foes after the collapse of communism. Moreover, the clout of ethnicity in U.S. foreign affairs is likely to expand with the declining influence of traditional professional elites, who dominated U.S. foreign affairs throughout the cold war. Indeed, the global surge of national independence and the third wave of democratic transitions have awakened older diasporas in the United States and energized the more recently organized ethnic groups. Both these groups now play an increasingly important role in providing support for democratization and self-determination abroad.

This article examines how this role has changed over time; how diasporas attempted to restructure the politics of their homeland, and with what effect. The article also explores the repercussions of ethnic

[1] A number of important works related to my analysis have appeared since this essay was accepted for publication. They include: Alexander DeConde, *Ethnicity, Race, and American Foreign Policy: A History* (Boston: Northeastern University Press, 1992); Martin Kilson, "African American and Africa: A Critical Nexus," *Dissent* (Summer 1992): 361–69; and Michael Clough, "Grass-Roots Policymaking: Say Good-Bye to the 'Wise Men'," *Foreign Affairs* 73 (January/February 1994): 2–7. For my own analysis, see Yossi Shain, "Marketing the Democratic Creed Abroad: US Diasporas in the Era of Multiculturalism," *Diaspora* 3 (Spring 1994): 85–111.

[2] See Nathan Glazer and Daniel Patrick Moynihan, eds., *Ethnicity: Theory and Experience* (Cambridge, MA: Harvard University Press, 1975), 23–24.

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foreign politics on the American domestic scene, emphasizing the dilemma of divided loyalties so inherent in diaspora's external politics. A diaspora's ability to play a serious foreign policy role is a consequence of the U.S. liberal-democratic ethos, which enfranchises the individual citizen regardless of origin of birth, as well as the expanded recognition of ethnic diversity; the institutional reality of a fragmented U.S. foreign policy establishment which empowers individual members of Congress; and the impact of a powerful media. The fact that Congress, and therefore constituency politics, has an important voice in U.S. foreign policy, compounded with the ready access of ethnic groups to American and thus global media, provides a fertile base for an organized and a strongly committed diaspora that may transform itself into a powerful political player with transnational implications. Yet in engaging in the politics of the country of origin (home-country), diaspora activists and organizations may become entangled in conflicting allegiances. They must justify their actions in terms of American national interests and values, answer to their U.S. ethnic compatriots, and prove their loyalty to their home country.

Part one provides a political definition of a diaspora and offers provisional typologies to assess diasporic politics. Part two discusses American diasporas' involvement in the struggles for self-determination in their country of origin. Special attention will be given to recent diasporic responses to the breakaway republics in East Europe and the former Soviet Union at a time when Washington has displayed a lack of decisiveness in responding to the renewed proliferation of nation-states. Part three examines diasporas' contribution to the creation and consolidation of new democracies. Part four, by way of conclusion, analyzes the bearing of U.S. diasporas on the movement for self-determination and/or democratic regime change through the prism of African-Americans' contribution to the black struggle in South Africa and to the democratic transformation of black African tyrannies. The African-Americans, who lack a single homeland, treat Africa as a whole as their ancestral home. Their mobilization against apartheid has demonstrated the powerful force of a diaspora in altering U.S. foreign policy and has highlighted the political responsibility that comes with such successes. Finally, the activity of African-Americans underscores how diasporic involvement in U.S. foreign affairs affects the evolution of American identity and mitigates the centrifugal tendencies that have encroached on American civic culture.

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DIASPORA—A POLITICAL DEFINITION

I have defined a political diaspora as a people with common national origin who reside outside a claimed or an independent home territory. They regard themselves or are regarded by others as members or potential members of their country of origin (claimed or already existing), a status held regardless of their geographical location and citizen status outside their home country. Members of a political diaspora are called upon periodically by ethnonational elements inside or outside the home-country's territory to subscribe to a particular cause or group as an expression of their ethnonational loyalty.[3]

Historically, diasporas in the United States have been highly dedicated to political causes in their country of origin, often seeing themselves as representatives of their old country abroad. Some older diasporas, like Jews, Greeks, and Italians, often live vicariously through their ancestral home countries, rather than actively trying to change their governments. Politics in the home country is important for their political identity in America, and they are more likely to support (or actively oppose) existing regimes whose policies coincide with (or contest) American liberalism and/or U.S. foreign objectives. They tend to embrace their homeland in a way that is not threatening to their identity within the parameters of American pluralism, and they must always defend themselves against the charge of divided loyalties. For example, Greek-Americans have been highly successful in projecting their American loyalty and ethnic identity "within the agora of American multiculturalism."[4] Yet their success in moving Congress to impose sanctions on Turkey after its invasion of Cyprus in 1974 backfired when the perception that "Congress acted irresponsibly," by capitulating to the pressure of an ethnic group, prevailed in public.[5] Similarly, the Jewish lobby in the United States has always portrayed its devotion to Israel (the symbolic homeland) as an extension of its allegiance to

[3] See Yossi Shain, *The Frontier of Loyalty: Political Exiles in the Age of the Nation-State* (Middletown, CT: Wesleyan University Press, 1989), 51–52. The traditional definition of diaspora applied to Jews who after the Babylonian captivity were scattered among the heathen. Today, many scholars use "diaspora" in a broader sense as a term that "shares meaning with a larger semantic domain that includes words like immigrant, expatriate, refugee, quest-workers, exile community, overseas community, ethnic community." See Khachig Tölölyan, "The Nation-State and Its Others: In Lieu of a Preface," *Diaspora* 1 (Spring 1991): 4–5. Also see Gabriel Sheffer, ed., *Modern Diasporas in International Politics* (New York: St. Martin's 1986).

[4] Gregory Jusdanis, "Greek Americans and the Diaspora," *Diaspora* 1 (Fall 1991): 218.

[5] See Alice Scourby, *The Greek Americans* (Boston: Twayne Publishers, 1984), 105.

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American democratic values and strategic interests. Yet it has increasingly found itself entangled between its obligation to the old and the new country.[6] Indeed, the vulnerability of diasporas to the charge of dual loyalty is a lever that either home or host country can use to motivate or stymie diaspora political activity. Thus, diasporas may function as pawns used to send messages between the United States and their native countries.

The nature and range of diasporic involvement in the home country's affairs depend largely upon the size and diversity of the overseas community and are highly affected by the ability of diasporic institutions to generate and sustain a sense of communal identity. Yet it is often difficult to assess the size of the diaspora, its composition, distribution, and especially its propensity to engage in home country's politics. To gauge diasporic make-up and political tendencies, one must take into account different waves of migration and degrees of assimilation and identity in the host country, as well as the migration politics of the home country. As a scholar of the overseas Chinese has recently observed, diasporic identities are constantly undergoing transformation, influenced by factors such as race relations in the United States, American relations with the home country, and the home country's policies toward its overseas constituencies.[7] Moreover, the durability of diasporic institutions and their success in appropriating and activating old identities (ethnic, cultural, religious, or national) is greatly influenced by the host government's view of the home regime (friend/foe) as well as the host society's changing perception of ethnic diversity. For example, despite their rapid Americanization, by 1914 German-Americans still remained "by far the best organized of all foreign elements"[8] in the United States. However, war frenzy and growing suspicion of American-Germans' alliance with the pan-German movement in Berlin prompted American demands for total assimilation and unqualified renunciation of past loyalties. By 1940, the little remnants of German identity and institutions that survived the anti-German phobia of World War I were completely suppressed, never to be revived.[9]

[6] See David Vital, *The Future of the Jews* (Cambridge, MA: Harvard University Press, 1990), 136; also see Arthur Hertzberg, "Showdown," *New York Review of Books*, 24 October 1991, 23–24.

[7] L. Ling-chi Wang, "Roots and Changing Identity of the Chinese in the United States," *Daedalus* 120 (Spring 1991): 205.

[8] Cited in Alejandro Portes and Rubén G. Rumbaut, *Immigrant America: A Portrait* (Berkeley: University of California Press, 1990), 107.

[9] See Victor Wolfgang von Hagen, *The Germanic People in America* (Norman: University of Oklahoma Press, 1976), 374–380.

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Older diasporas in the United States are composed mostly of naturalized and American-born citizens who are by now an integral part of the American ethnic mosaic. More recent diasporas, however, may consist of large segments of non-American citizens, including illegal and resident aliens, refugees, and political exiles. The latter group's involvement in the home country's politics is often more intense, though it is restricted legally and politically and has distinct implications vis-à-vis the homeland. Yet even this broad dichotomy between diasporas whose host state is their country of citizenship and diasporas whose home state is the state of nationality is far from precise. In fact, the status of a temporary resident, an immigrant, a refugee, a U.S. citizen or an exile, is always in flux, changing according to the individual's self-identification in the United States, the home government's legal and ideological denotation of overseas nationals – primarily issues concerning dual citizenship and naturalization rules among states, that is, *ius soli* (birthplace) or *ius sanguinis* (blood) – as well as the political and social developments in the home country.

For analytical purposes, one can identify, following Alicja Iwańska, three ideal groups involved in diasporic politics: "core members" or organizing elites who are intensively active in diasporic affairs; "rear guard members" or past diaspora activists who have drifted away; all other "silent" members whom diaspora elites, host governments, or home governments consider as potential recruits for diasporic politics.[10] While core and rear guard members are more accessible to empirical scrutiny, members of the third group are mostly part of an "imagined community," to use Benedict Anderson's expression, often existing only in the mind of diasporic political activists, as well as home or host governments. Some members of the imagined community "can identify with their perception of the old country or homeland, transforming it into a symbol which leaves out its domestic or foreign problems";[11] others may reject any attempt to identify them as diaspora constituents. Some diasporic elites are made up of political exiles who are contestants for power in the homeland, while other diaspora leaders do not seek power in the homeland and their commitment is not to a particular political program. Rather, they see themselves as supporters of the home country's national interest as a whole.

[10] Alicja Iwańska, *Exiled Governments: Spanish and Polish* (Cambridge, MA: Schenkman Publishing Co., 1981), 43–44.

[11] Cited in Richard D. Alba, *Ethnic Identity: The Transformation of White America* (New Haven: Yale University Press, 1990), 151.

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Diaspora and National Independence

Diasporic communities of stateless nations have historically played an integral part and often led in the struggle for political independence in their claimed homelands. The current trend toward self-determination has revived similar involvement. In the 1860s, Irish-American nationalists who were veterans of the American Civil War worked to draw the United States into a war with the British Empire. The climax of their activity was the Fenian Brotherhood's ill-fated attempt to liberate an Irish zone in Canada.[12] Prior to World War II the campaign of Irish-Americans for home rule had been highly effective in setting up an antagonistic relationship between the United States and Great Britain. Thereafter it has been steadily in decline, though from time to time it reemerges as a source of tension between the two countries.[13]

With the outbreak of World War I, ethnic Americans became increasingly preoccupied with their native countries. Woodrow Wilson's proclamation of the principle of self-determination further ignited the political commitment of Poles, Slovaks, Ukrainians, Lithuanians, Armenians, Albanians, and Croats. They all lobbied vigorously for American recognition of and support for postwar independence, carefully blending into their campaigns the homeland's agenda and the interests of the United States and always stressing their own impeccable record as American loyalists.[14] More recent manifestations of a diaspora's effort on behalf of an independent homeland include North American Sikhs' campaign for an independent Sikh country, Khalistan,[15] and the crusade of Palestinian and Arab-Americans for Palestinian self-determination. For many years the Arab-Americans' efforts have been undermined by the perception in the United States that they are "more anti-Israel than pro-Arab."[16] Still, with an increasing media display of Palestinian suffering under Israeli rule, a growing U.S.

[12] See J. Bowyer Bell, "The Transcendental Irish Republic: The Dream of Diaspora" in Yossi Shain, ed., *Governments-in-Exile in Contemporary World Politics* (New York: Routledge, 1991), 202–218.

[13] See Charles McC. Mathias, Jr., "Ethnic Groups and Foreign Policy," *Foreign Affairs* 59 (Summer 1981): 982. Also see Paul Arthur, "Diasporan Intervention in International Affairs: Irish America as a Case Study," *Diaspora* 1 (Fall 1991): 143–162.

[14] Monna Harrington, "Loyalties: Dual and Divided" in Michael Walzer et al., *The Politics of Ethnicity* (Cambridge, MA: The Belknap Press of Harvard University Press, 1982), 122–23.

[15] On the diplomatic efforts and the terrorist activities of the Sikh diaspora, see Ian Mulgrew, *Unholy Terror: The Sikhs and International Terrorism* (Toronto: Key Porter Books, 1988).

[16] See Christopher Madison, "Arab American Lobby Fights Rearguard Battle to Influence U.S. Mideast Policy," *National Journal*, 31 August 1985, 1934–1938.

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receptiveness to the idea of Palestinian statehood, and an improved apparatus, the diaspora made some headway in penetrating U.S. electoral politics and public opinion. Arab-Americans have portrayed their commitment to a Palestinian "democratic homeland" as an extension of "America's most cherished ideals—Wilsonian self-determination, human rights [and] freedom."[17] With peace negotiations between Israel and its Arab neighbors underway, the increasing presence of organized Arab-American lobbies may eventually translate into an important transnational role for the Arab-American diaspora. In November 1991, President George Bush hosted a group of Arab-American leaders in the White House and asked them to assume the role of peace promoters in the Arab world.[18]

One of the most serious diasporic contributions to a homeland's independence in this century was made by both Czech and Slovak Americans who played a pivotal role in the dissolution of the Hapsburg Empire and the creation of modern Czechoslovakia in 1918. From the beginning of the war, Czech and Slovak groups provided much of the anti-Hapsburg agitation, furnished material assistance for domestic agitation, and lobbied forcefully both the president and Congress on behalf of Czechs' and Slovaks' liberation. These efforts were particularly effective following the American entry into the war. The Slovak League of America and other emigre Slovak Associations in the United States were vital in reaching an agreement on the nature of independent Czechoslovakia with Tomas G. Masaryk—the Czech exiled nationalist leader who at that time traveled to the United States to mobilize his compatriots and Woodrow Wilson's support. The so-called Pittsburgh Agreement, signed on 30 May 1918, represented Slovak retreat from an early Slovak-Czech document (the Cleveland Agreement) that advocated the federal union of the Slovak and Czech nations in an independent state. In the Pittsburgh Agreement, the American Slovaks yielded to the Czechoslovakian orientation by accepting autonomy for "Slovakia" while avoiding any reference to the "Slovak nation."[19]

[17] See Abdeen M. Jabara, "A Strategy for Political Effectiveness" and Gregory Orfalen, "Sifting the Ashes: Arab-American Activism During the 1982 Invasion of Lebanon" in Baha Abu-Laban and Michael Suleiman, eds., *Arab Americans: Continuity and Change* (Belmont, MA: Association of Arab Americans University Graduates, 1989), 201-225.

[18] Uri Nir, "Bush Meets with Arab-American Leaders," *Haharez*, 11 November 1991.

[19] See Robert A. Kann and Zdenek V. David, *The Peoples of the Eastern Habsburg Lands, 1526-1918* (Seattle: University of Washington Press, 1984), 391; George J. Kovtun, *Masaryk & America: Testimony of Relationship* (Washington, DC: Library of Congress, 1988), 11-27.

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The current nationalist tension that threatens to tear Czechoslovakia apart has reawakened the Czech- and Slovak-Americans, who have greeted with jubilation the Velvet Revolution. Truly, Czechs and Slovaks in the United States (mostly third or fourth generation) are more preoccupied with personal matters stemming from the collapse of communism than with the question of secession. Many of their groups were recently united under The Free Czechoslovakia Fund in protest against the decision by the Czechoslovak Federal Parliament to exclude American citizens and other Czechoslovak nationals abroad from entitlement for restitution of private property confiscated and expropriated under communist rule. Thousands of diaspora members have recently petitioned the U.S. authorities to "protest the arbitrary discrimination against American citizens and promote a respect of private property rights in Czechoslovakia."[20] Yet, Slovak nationalists in the United States and Canada have also played an important role in encouraging the separatist drive inside Slovakia. As early as December 1990, The Slovak League of America, the leading Slovak diaspora organization, expressed support for Slovak sovereignty. The League's leaders charged that the Pittsburgh Agreement was violated by Masaryk when he failed to grant autonomy to the Slovaks, and they blamed the Czechs for refusing to correct the omission of the hyphen during the April 1990 round table. Their resolution on Sovereignty of the Slovak Republic was submitted to the Slovak National Council and the Slovak government.[21] When in October 1991, President Václav Havel visited the United States, he was scheduled to receive the original copy of the Pittsburgh Agreement, to later present it to Slovaks at home as a framework for hauling the country out of its nationalist division. But, the original document remained in the hands of the Slovak League of America, and Havel returned home empty handed.[22] Prior to the Czechoslovak June 1992 elections, leaders of the Slovak League traveled to Bratislava to declare their backing of all Slovak proponents of self-determination.[23]

The revival of secessionist claims in East Europe and the former Soviet Union, which reawakened dormant diasporas, had initially re-

[20] A copy of the petition is available upon request.

[21] See *Slovák V Amerike* (Clifton, NJ), January 1991, 12.

[22] See John Tagliabue, "Czechoslovakia Reaches Out Despite Pressures Within," *New York Times*, 20 October 1991.

[23] Here I am drawing on conversations and documents provided by M. Mark Stolarik and Igor Uhrik of the executive committee of the Slovak League of America and on a lecture by Rudolf Battek, one of the founders of Civic Forum, Middlebury College, Vermont, 8 October 1992.

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ceived a cool reception at the White House. During 1990–1991 the Bush administration viewed quests for self-determination with doubt and apprehension and only belatedly came to recognize their powerful force. On his visit to Yugoslavia in June 1991, Secretary of State James Baker said that the United States would not recognize the then would-be breakaway republics "under any circumstances."[24] During a speech in Kiev in August 1991, President George Bush portrayed the secessionist movement in the Soviet Union as "suicidal nationalism."[25] However, when in November 1991, Ukraine had moved decisively toward independence, the United States was forced to admit its underrating of the separatist drive and acknowledged the inevitability of the Soviet Union's demise. The decision to shift U.S. diplomacy away from Mikhail Gorbachev's effort to preserve the Soviet Union, just days before Ukraine's independence referendum, was partially motivated by President Bush's desire to score domestic points among the 1.5 million Ukrainian-Americans and other Eastern European diasporas. The president disclosed his decision to recognize Ukraine to diaspora leaders in the hope of winning the hearts of a sizable voting bloc that was traditionally Democratic.[26]

Indeed, until the end of 1991, the United States withheld recognition from the self-proclaimed independent breakaway republic, even though they elected democratic governments. The United States saw the disintegration of states as a source of global instability and favored loose federal arrangements and accommodation. The early recognition granted to independent Baltic states was an exception, because the United States and other countries never recognized the Baltics' incorporation into the Soviet Union in 1940. In the case of the Baltics, the consistent nonrecognition posture of the United States in the postwar era may be attributed, at least in part, to the strong diasporic lobby, especially of Lithuanian-Americans, who were behind the institution of an annual vigil of congressional and presidential reaffirmation on the national holidays of the three states. These symbolic gestures were difficult to ignore when the Baltics declared independence.[27] To the extent that the White House had contacts with diaspora communities before

[24] See "Yugoslavia Is Such a Bother," *The Economist*, 29 June 1991.

[25] Cited in William Safire "Ukraine Marches Out," *New York Times*, 18 November 1991.

[26] See Andrew Rosenthal, "Aides Say Bush Is Shifting Focus to Relations among the Republics," *New York Times*, 30 November 1991.

[27] See Romuald Misiunas, "Sovereignty without Government: Baltic Diplomatic and Consular Representation, 1940–1990" in Shain, ed., *Governments-in-Exile*, 134–144.

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the American decision in December 1991 to establish relations with the splintering parts of the Soviet Union, it tended to encourage their leaders to uphold the U.S. cautionary posture, or at least to remain dormant on the issue of secession. Yet, by adopting Washington's early posture or by taking a wait and see attitude, diaspora's activists, particularly those interested in returning home, have risked compromising their credibility inside their homelands.

For example, Armenian-Americans' initial support of Washington's admonition has resulted in their leaders' loss of their anticipated political role as the navigators of Armenian national life in the former Soviet Armenia. This leadership role inside Armenia was expected because of the laborious involvement of leading Armenian organizations in the United States, which had raised and channeled support and money to needy Armenians throughout the seventy years of communist rule. In 1989, when the diaspora's leaders called on the home nation to reach an agreement with Gorbachev without secession, they were perceived at home as reinforcing the communists' line. When leading diaspora members of the Dashnag party – which ruled the independent Armenian Republic (1918–1920) and since Armenia's reoccupation served as a government-of-exiles abroad – belatedly responded to Armenia's declaration of independence and returned home to compete for the presidential elections (October 1991), they suffered a humiliating defeat. It is now clear that a new diaspora/home division of labor has been drawn. The U.S. Armenian diaspora is asked by the Armenian authorities to take the back seat on political issues inside the homeland, though it is still expected to extend its technocratic expertise and economic services as an expression of its national commitment. Indeed, in recent years Armenian-Americans have been critical supporters of Armenian demands for independence in Nogorno-Karabakh. The Armenian lobby in Washington was instrumental in the U.S. Congress's 1992 Freedom Support Act that blocked aid to Azerbijan.[28]

How far are diaspora organizations and leaders willing to push the cause of their homeland's independence against the U.S. official position? Certainly, when appealing to an unsympathetic administration, diasporas must work hard, usually through Congress and the media, at persuading decision makers to shift their position. They must feign

[28] See Khachig Tölölyan, "Exile Governments in Armenian Polity," in Shain, ed., *Governments-in-Exile*, 166–187, and his "Commentary," *Diaspora* 1 (Fall 1991): 225–28. I have also benefited from personal conversations with Tölölyan.

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interest in what preoccupies the U.S. government and redefine their case to relate to those preoccupations. When the United States still repudiated secession moves (1990–1991), East European diasporas lowered their rhetoric of self-determination while accentuating the U.S. moral commitment to support those who chose freedom, democracy, and market economy.

How to address the American indifference to self-determination has been at the center of the debate among Croatian-Americans, who since the summer of 1991 have witnessed with horror the destruction of their homeland by the former Yugoslav federal army. The struggle between the Serbs and the Croats has long penetrated the American scene and has become a source of contention between members of the two overseas communities. In fact, the two diasporas do not promote a sense of unity and accommodation and to some extent even encourage the home rivalries. During World War II, when the Yugoslav government-in-exile in London was trying to keep its own unity intact in the face of reports of Croat atrocities against Serbs in Croatia, it turned to its diaspora in the United States as a source of moderation. But the diaspora soon mirrored the schism at home. A pro-Serbian Pittsburgh newspaper, *American Srobobran*, accused the Croats of betrayal and was portrayed by Miloš Trefunonvić, then minister of education in the exiled government, as the organ that "set out on the road of national separatism."[29] As the acrimony among the various national groups and publications escalated, the U.S. Office of War Information intervened, unsuccessfully trying to solicit all groups' commitment to unity.

Fifty years later, the national rivalries that have torn Yugoslavia apart are again mirrored in the respective diaspora communities in the United States. The current dispute among American-Serbs and American-Croats is largely dominated by charges and countercharges over past and present wrongs. Croatian-Americans along with the authorities in Zagreb have made special efforts to lure Jewish-American groups to their cause. In numerous letters, publications, and pamphlets, they have emphasized their aversion to old anti-Semitism and stressed the new Jewish-Croatian alliance in the homeland.[30] Since 25 June 1991, when Croatia and Slovenia proclaimed their independence and the Yugoslav civil war erupted, their overseas nationals have been mobilized

[29] See Paula Franklin Lytle, "Loyalty and Recognition under Challenge: The Yugoslav Case 1941–1945" in Shain, ed., *Governments-in-Exile*, 122.

[30] Documents are available upon request.

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to enhance their causes abroad. Croatian-American groups helped establish the Office of the Republic of Croatia in Washington, DC, and formed a branch of President Franjo Tudjman's Croatian Democratic Union party (HDZ) in Cleveland. The numerous Croatian organizations launched lobbying campaigns in the White House and Congress, organized large demonstrations in Washington and at the UN, and used the American media to focus public attention on their peoples' suffering. In their initial campaign following Croatia's independence proclamation, Croatian-Americans responded to Washington's hostility toward the new trend of nation-states' proliferation by downplaying the rhetoric of self-determination. Instead they stressed the symmetry between American cherished values and their homeland's commitment to democracy, human rights, and a market economy. But toward the end of 1991, with the increased bloodshed at home and in light of Germany and other European Community's (EC) members' decision to proceeded with diplomatic recognition of Croatia and Slovania (rebuffing pleas of the United States and the United Nations to refrain from extending recognition to the breakaway republics), American-Croat organizations became more aggressive in their efforts to obtain U.S. recognition.[31] Croatian-Americans have also organized the shipping of medical supplies and clothing, which were brought into the republic via Italy, Austria and Hungary through the American Red Cross. In the summer of 1991, Croatian-American members of OTPOR, an organization affiliated with "The Croatian National Resistance," were arrested in Miami and charged with violating the Arms Export Control Act for plotting to ship millions of dollars worth of weapons to the republic of Croatia.[32]

Diasporas and Democratic Regime Change

By and large, matters concerning the integrity and sovereignty of the ancestral homeland or the safety of the scattered nation are likely to galvanize a more intense diaspora involvement than matters concerning the homeland's domestic political struggles. In the first instance, the

[31] For the information on the activities of the Croatian diaspora, I am indebted to Nenad Bach (Irvington, NY) and to Paula Franklin Lytle. It has been argued that the strong German support of Croatia's independence can be attributed in part to the fact that Germany has a built-in lobby consisting of the nearly 500,000 Croats living in the country. See *Time*, 30 December 1991, 29.

[32] See Michael Isikoff, "Member of Croatian Group Charged in Army Plot," *Washington Post*, 13 August 1991.

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dichotomy between Us and Them is evident, and the question of where the national interest lies is rarely in contention. However, when the principal rivals in the interpretation of national loyalty are national contestants for power in the homeland, each vying to represent its own interpretation of the national interest, diaspora members may shy away from the home country's politics. Allegiance to an aspirant opposition under a nondemocratic rule, in particular, may prove to be too costly.

The fact that U.S.-assimilated diasporas are more likely to engage in home country affairs of a national friend/foe nature than in domestic politics concerning democratization is best demonstrated in the discrepancy between the Greek-Americans' vigorous campaign that moved Congress to impose an economic and military embargo on Turkey following its 1974 invasion of Cyprus, and their acquiescence and collaboration with the military junta at home. Greek political exiles operating from the United States and Europe to overthrow the dictatorship in Athens (1967–1974) had to face the fact that many Greek-Americans were fervent anticommunists and in many respects potential allies of the colonels' regime. Only a few were willing and able to devote their time and effort to the struggle for democracy.[33]

The pattern of unequivocal diaspora support for the home nation as a whole excludes the unusual circumstances when the home country and the host country are at conflict or war, a situation that brings the bewildering diaspora loyalty dilemma to its extreme. In wartime, when "a particular prefix . . . coincides with the name of an enemy nation [it tends to] . . . stigmatize rather than Americanize its bearer."[34] Under such difficult tensions, diaspora members may be called upon to make the excruciating choice between their identities. During World War I, German-Americans "swatted the hyphen" and dropped the umlaut. During the Gulf crisis, Arab-Americans found themselves on the defensive when their home compatriots gave passionate support to Saddam Hussein.[35] Today, when Serbs appear to be the villains in Bosnia, American-Serbs are lowering their profile, wavering between support for Serbs' "historical rights" and condemnation of President Slobodan Milošević. Within this context of international isolation, Belgrade's

[33] See *Newsweek*, 19 January 1970, 36–37.

[34] Benjamin Barber, "To Be An American: Identity as Citizenship in the New World" (paper presented at a conference on Political Identity in American Thought, Yale University, April 1991), 8.

[35] See Felicity Barringer, "With Loyalty Split, Arab-Americans Fault Hussein, But Question U.S. Too," *New York Times*, 16 August 1990.

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ruling Socialist party offered the post of prime minister of Yugoslavia to a Serbian-born naturalized American, Milan Panić, in an attempt to deflect U.S. pressure.[36]

At first, many Serbs regarded Panić as Milošević's puppet, while others considered him an entrepreneurial hero for making a fortune in pharmaceuticals in the United States. Right-wing Serb nationalists labeled him a CIA agent, pointing to the fact that he had to get U.S. government clearance to serve in a foreign government. Soon after he assumed his post as prime minister, Panić became Milošević's major opponent. He blamed the president and other militant Serb nationalists for the war and called for a compromise with the successor republics. When he decided to contest the presidential election against Milošević, Panić became a target of the state-controlled media which launched an unremitting assault on him as a Serbian traitor and an agent of the CIA. After his defeat in Milošević's rigged elections in December 1992, communists and nationalists combined forces in the federal parliament to oust Panić from his post as prime minister. He was declared "a foreign agent who should be jailed for embezzlement and for acting against the interests of the Serbian people."[37] Panić and his entire Serbian-American staff were sent back to America.

It must be remembered that home governments usually enjoy the advantage over other contestants for power in the state in establishing standards for loyal and disloyal behavior. Their prescribed criteria for loyalty do not stop at the borders of the state. Nondemocratic regimes also tend to denigrate their political opponents as "nationally disloyal," a designation which licenses the home regime to impose psychological and material penalties on constituencies at home and abroad who oppose the regime. The yardstick for "nationally loyal" conduct fluctuates with the regime's changing definition of the national interest. Hence, governments may include or exclude interchangeably co-nationals abroad from the national community as a cost-benefit mechanism to ensure national loyalty. The fear of being branded disloyal is one of the reasons why people who flee their native country often refrain from attacking it while abroad. Moreover, despotic regimes—vulnerable to foreign criticism and pressure, and dependent on U.S. economic, or military support—which perceive a threat in

[36] See Trudy Rubin, "An American Is Best Hope for Battered Ex-Yugoslavia," *Philadelphia Inquirer*, 9 October 1992.

[37] Chuck Sudetic, "Yugoslav Premier Ousted by Foes 6 Months After Return from U.S.," *New York Times*, 30 December 1992.

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the diaspora's ability to foster and channel international animosity toward them may use a variety of means to discredit, deter, and silence overseas opponents, including retraction of citizenship, restriction on visitation, confiscation of property, withdrawal of academic awards, persecution of relatives in the homeland, and, in extreme cases, kidnaping and political assassination.[38]

In many instances, the struggle of overseas communities to unseat authoritarian regimes in the home country is led by political exiles who, prior to their departure, were engaged in antiregime activity at home or were regarded by the home regime as troublemakers. The more immediate pool from which this core elite may draw followers is that segment of the national diaspora forced to flee their country for political reasons. Another fertile source for overseas recruitment is foreign students. Organizing abroad along national lines, foreign students are prone to demonstrate against nondemocratic practices at home. Iranian students in the United States played a pivotal role in repudiating the shah's regime in the UN, in the U.S. Congress, and in the media. In the past few years, Chinese students are in the vanguard of the opposition to the communist authorities in Beijing.[39]

Since September 1991, when a military coup deposed and exiled Haitian elected president Jean-Bertrand Aristide, the Haitian community in the United States has sought to restore Aristide to power. While the Bush administration was tinkering with the idea of reestablishing Haitian democracy without the return of Aristide, the diaspora remained firm in its support of the exile leader. Aristide, who established his government-in-exile in Washington DC, energized the diaspora through radio broadcasts and public appearances. He addressed the diaspora as Haiti's "tenth department" (Haiti is divided to nine regions). The campaign to restore Aristide has also become a rallying cry for organized African-Americans.[40]

Since large diasporas are often products of different migration vintages and of different political circumstances at home, the diaspora pool will rarely consist of a homogeneous population holding similar views, or retaining the same militancy toward the home government. Thus, even among Cubans who fled after Fidel Castro's revolution,

[38] See Shain, *The Frontier of Loyalty*, 145–162.

[39] After the Tiananmen Square massacre, Chinese leaders devised a plan to win back moderate overseas Chinese and to curtail the opposition of active exiles in the United States. For details, see Robert Delfs, "Long-arm Tactics," *Far Eastern Economic Review*, 5 July 1990, 10–11.

[40] See Elaine Ray, "In Another Country," *Boston Globe Magazine*, 26 July 1992, 14–27.

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we must separate between the militancy of the earlier wave of refugees and the post-1964 emigres. Although both groups opposed the regime in Havana, the latter came to the United States principally for economic gain and was increasingly depoliticized. In the 1970s, many Cuban-Americans started to look for normalization of relations with Havana. This accommodating spirit, which was encouraged by the Carter administration, resulted in a dialogue with Castro on the reunification of families and led to Havana's changing its labeling of the diaspora from "traitors" to "members of the Cuban community abroad."[41] But the *dialogo* came to a quick end with the disastrous 1980 Mariel boat lift, and with the help of the militant Cuban exile group Omega 7, which resorted to terrorism to deter conciliatory diaspora tendencies.

More recently, in light of the collapse of the Soviet bloc, Castro's increasing isolation, and the deterioration of the Cuban economy, Cuban-Americans have intensified their activity. Exile militants, members of paramilitary groups in South Florida who refuse to await Castro's own demise, urged President George Bush to grant them the right to use force to oust the regime in Havana. Their combative mood was heightened further when in January 1992, as part of Castro's unyielding posture, Cuba executed a Cuban exile of the shadowy Miami paramilitary group Alpha 66 who was captured with another two exiles after landing on the Cuban coast. Other Cuban-American leaders advocate more moderate tactics of tightening the economic squeeze, enhancing the diplomatic pressure in the United States and abroad, and continuing the campaign over Radio and TV Marti.[42] In October 1992, Cuban-Americans scored a diplomatic coup as transnational actors when President Salinas de Gotari of Mexico acceded to U.S. pressure and met with two of their prominent leaders, including the controversial chairman of The Cuban American National Foundation and the would-be president of Cuba, Jorge Mas Cansosa. Salinas acknowledged the potential importance of Cuban-American support to the congressional passage of the North American Free Trade Agreement and departed from Mexico's traditional support for Cuba.[43]

[41] See Silvia Pedraza-Bailey, *Political and Economic Migrants in America: Cubans and Mexicans* (Austin: University of Texas Press, 1985), 29.

[42] See Larry Rother, "The Cold War of Cuba and the Miami Exiles Heats Up," *New York Times*, 26 January 1992; James J. Guy, "Cuba: A Regional Power Without a Region?" *The World Today* (August/September 1990): 165–166.

[43] Tim Golden, "Mexico's Chief, in a Shift, Meets Two of Castro's Main Foes in Exile," *New York Times*, 5 October 1992.

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The efforts of the Cuban-American lobby to unseat Castro have generally concurred with U.S objectives. Yet the lobby's clout has demonstrated that even American presidents may be forced to compromise their position in the face of a well organized diaspora that poses an electoral threat. In the months leading to the 1992 presidential elections, with polls showing a close race in Florida between Democratic nominee Bill Clinton and Republican President George Bush, Mas Canosa pushed Congress to pass the controversial Cuban Democracy Act, which tightened the American economic embargo of Cuba. Despite Bush's concerns that the bill would alienate U.S. trade allies, the president yielded in the face of Bill Clinton's early endorsement of the measure. Consequently, *The New York Times* wrote that Mas Canosa has become "one of the most effective power brokers in Washington."[44]

As noted earlier, the propensity of diasporas to take part in a campaign to overthrow and replace a nondemocratic regime are greatly affected by the official U.S. posture toward the home government. In the case of postwar East European diasporas, for example, though the United States shared their ultimate goal of freedom and independence for their captive nations, the U.S.–Soviet understanding on spheres of domination rendered diasporas' activities ineffective, with the exception of symbolic successes. In the 1960s, in the face of communist impermeability and their own impotency, East European exile institutions were largely transformed into American ethnic organizations.[45] From the 1950s until the mid-1970s, support for human rights and democracy in other countries was secondary in American foreign policy to containing the power and influence of communism. The granting of asylum became a tool of foreign policy, as refugees and political exiles fleeing communist countries "became touching symbols around which to weave the legitimacy needed for foreign policy."[46]

The cold war also affected Washington's posture toward diasporic political activity. Diaspora opponents of America's right-wing "friendly dictators" were discouraged and in some cases the CIA even collaborated with or acquiesced in the face of underground foreign agent

[44] See Larry Rother, "A Rising Cuban-American Leader: Statesman to Some, Bully to Others," *New York Times*, 29 October 1992. Also see Cathy Booth, "The Man Who Would Oust Castro," *Time*, 26 October 1992, 56.

[45] See Alicja Iwańska, "Modern Exiles: Spanish, Polish, American," *The Polish Review* 23 (1978): 60.

[46] Pedraza-Bailey, *Political and Economic Migrants in America*, 154.

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activity intended to silence dissident voices in the United States.[47] Yet, even when the home regime was communist, diaspora's opposition was not consistently appreciated; American backing varied along with changing strategic interests. Thus Richard Nixon's opening to Communist China led to U.S. cultivation of the Chinese diaspora's cooperation with Beijing, while discouraging overseas opposition. Beijing in turn sought to utilize the new relations with Washington to undermine Taiwan's status in the United States by opening its borders to "our fellow countrymen abroad" to witness the achievements of communism.[48] During the Carter era, American foreign policy placed the promotion of human rights on the top of its international agenda. Yet, even under President Jimmy Carter the overriding concern for strategic interests often rendered the issue of human rights subsidiary, and diasporic campaigns for democratization in the homeland that did not coincide with U.S. short-term goals were ignored or even obstructed. In 1979, the U.S.-based opposition to Ferdinand Marcos, which sought to capitalize on Carter's declared human rights policy, became dispirited when the president was quick to shelve criticism of Marcos after the United States secured a new agreement on the U.S. military bases in Manila.

In President Ronald Reagan's first administration, the subject of human rights in authoritarian systems was relegated to a lower status. Carter's human rights policy was labeled "naive" and damaging to U.S. security, and new emphasis was put on combating communist subversion. The administration's new posture "elevate[d] 'totalitarian' violations to a higher plane than 'authoritarian' [human rights] violations."[49] While officially promoting gradual democratic regime change in communist and noncommunist countries, Reagan's democratic rhetoric has often been invoked cynically. In August 1981, on his visit to Manila, then Vice President Bush went as far as praising President Ferdinand Marcos for his "adherence to democratic principle and to the democratic processes."[50] Consequently, when leaders of the Filipino U.S.-based democratic opposition were implicated in the 1981

[47] See Jack I. Garvey, "Repression of Political Emigre—The Underground to International Law: A Proposal for Remedy," *Yale Law Journal* 90 (November 1980): 78–120.

[48] See "Peking and Taiwan Compete for Support Abroad," *Los Angeles Times*, 15 March 1984.

[49] For a critical evaluation of Reagan's human rights record, see Iain Guest, *Behind the Disappearances: Argentina's Dirty War Against Human Rights and the United Nations* (Philadelphia: University of Pennsylvania Press, 1990), 247–319; quote on 259.

[50] Cited in Daniel B. Schirmer and Stephen Rosskamm Shalom, eds., *The Philippines Reader* (Boston: South End Press, 1987), 227.

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series of bombings in Manila, Marcos was able to convince the Reagan administration to crack down on his overseas opponents.[51] Only towards the mid-1980s, after some years of "democratic ambiguity," did the Reagan administration became genuinely committed to democratic transformation around the globe.

Despite many obstacles, the experience of recent years shows that diasporas may contribute significantly to democratic change in their native countries. They do so by challenging the home regime's attempts to suppress or coopt its opposition, contesting the regime's international legitimacy, exposing human rights violations, combatting the home regime's foreign propaganda, obstructing friendly relations with the United States through effective lobbies, and finally assisting and actively participating in the struggle of the domestic opposition. In many instances political exiles and other diaspora members have returned home in the aftermath of regime transition to occupy top private and public posts. The anti-Marcos campaign of Filipinos abroad has been one of the most successful and multifaceted diasporic efforts to unseat a nondemocratic regime, and it became a model for Korean-American groups who organized to protest Chun Doo Hwan's authoritarian practices.[52] Shortly before his death, in an attempt to clear his name Marcos published an essay in which he maintained that the chief reason for the shift in the U.S. friendly posture toward his regime was "the contrived image of the Philippine reality" cultivated "by the articulate and well-financed representatives of the anti-Marcos expatriates residing in North America." He further argued that, "the committee hearings in the U.S. Congress were given the widest circulation by the American press; [and that] the wildest charges [against him] were given credence."[53]

A major reason for the success of diasporic communities in affecting U.S. diplomacy vis-à-vis the home government is the nature of American politics and especially the power of the individual Congressmember—which makes a unitary foreign policy unlikely. Today, even immigrants and refugees without citizenship status may find easy access to Congress and the media and build other networks that influence American foreign policy. Moreover, American party politics has been

[51] See Yossi Shain and Mark Thompson, "The Role of Political Exiles in Democratic Transitions: The Case of the Philippines," *Journal of Developing Societies* 6 (January–April 1990): 71–86.

[52] See Martin Tolchin, "High Profile for South Korean 'Embassy in Exile,'" *New York Times*, 10 October 1986.

[53] See Ferdinand E. Marcos, "A Defense of My Tenure," *Orbis* 33 (Winter 1989): 94.

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increasingly dominated by ethnic groups that have pushed their domestic and homeland's concerns to the center of the parties' platforms.

For example, in 1988, just a few weeks before Mexico's 1988 presidential elections, an international controversy erupted when members of the California Democratic Party Chicano caucus recommended a condemnation of human rights violations in Mexico in the California Democratic platform for the Democratic national convention. While the Mexican opposition hailed the motion, associates of President Salinas strongly criticized the proposal "as interventionist and filled with stereotypical generalities and false assertions."[54] This incident represented a growing involvement of Mexican-Americans in Mexico's domestic affairs in the last decade. Their impact became pronounced when in 1987, Cuauhtémoc Cārdenas, son of the legendary Mexican president, Lāzaro Cārdenas, announced his candidacy as a contender against the old ruling Partido Revolucionario Institucional (PRI). Cārdenas broke with the traditional indifference of Mexican politicians toward the diaspora. He employed an effective transborder campaign that forced the Mexican ruling party to acknowledge the power of the Chicanos in future U.S.-Mexican relations. Consequently, in the last few years the government of President Carlos Salinas carried out a serious effort to improve relations with the Mexican-American diaspora. Mexico now recognizes "that Mexican Americans have created a distinct identity, and . . . praises their cultural production. [T]he Mexican government has taken a major step toward officially burying *pocho*" [a derogatory term universally used until recently to question the loyalty of diasporic Mexicans to their homeland and to ridicule their inferior culture].[55] Hence, the Mexican government, which ventures to transform the large diaspora into a source of political support in the United States, displays greater sensitivity to criticism on human rights and democracy: "They've come to understand that we are Americans first of Mexican descent – that we care about democracy and that at times we're very critical of the lack of political openness there,"[56] said Antonia Hernandez, president of the Mexican-American Legal

[54] See "Cuauthémoc Cārdenas and the Rise of Transborder Politics" in Carlos B. Gil, ed., *Hopes and Frustration: Interviews with Leaders of Mexico's Political Opposition* (Wilmington, DE: Scholarly Resources Inc., 1992), 298.

[55] See Rodolfo O. de la Garza, "Mexico, Mexicans, and Mexican-Americans in U.S. Mexican Relations," Center for Mexican American Studies, University of Texas at Austin, Paper No. 89-02, 8.

[56] See Tim Golden, "Mexico's Trying Hard to Lift Its Political Profile in the U.S.," *New York Times*, 30 December 1991.

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Defense and Educational Fund, based in Los Angeles. Undoubtedly, the large *mexicano* diaspora is now quickly emerging as a central player in light of the free trade agreement Mexico negotiated with the United States and Canada.

In the aftermath of the cold war, when the principles of democracy and human rights reign supreme, it has become more difficult for the United States to overlook dictatorial practices of friendly regimes. This development should enable diasporas to become more effective in pushing policy makers to adhere to America's values of promoting democracy and an open society around the globe. Such pressures may be critical when ad hoc strategic interests seem to take precedence over the promotion of democracy. Certainly, in recent years the U.S. government is more disposed to hear concerns of ethnic Americans who endeavor to influence American diplomacy toward their country of origin if and when they promote democracy and human rights.

As Myron Weiner has pointed out in his study of the impact of Asian-Americans on U.S. foreign policy, "[b]ecause immigrants and human rights activists are likely to be vociferous when the [transgressing] . . . country is an ally of the United States, their demands will invariably create strains in U.S. relationships with [home] . . . governments. These demands will further generate conflicts within Washington over how we should weigh human rights against strategic considerations."[57]

Naturally, the ability of the United States to drive a government to improve its human rights practices and to democratize its political system increases in direct correlation to the home regime's vulnerability to diplomatic and economic pressure. However, diasporas that play the card of economic sanctions imprudently risk being seen as insensitive to indigenous national concerns. When in 1983 the United States negotiated the renewal of its bases in the Philippines, the leaders of the U.S.-based opposition to Marcos faced a dilemma. As nationalists, they wanted the United States to pay rent for the bases without dictating how the money should be spent; as opponents of the regime they feared Marcos would misuse the funds to strengthen his rule. In testimony before Congress, diaspora leaders "grit their teeth and suggest[ed] that it be given in aid, rather than rent, and if possible all non-military

[57] See Myron Weiner, "Asian Politics and U.S. Foreign Policy" in Robert W. Tucker et al., eds., *Immigration and U.S. Foreign Policy* (Boulder, CO: Westview, 1990), 207-208.

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aid."[58] Post-Tiananmen Chinese exiles who advocate U.S. sanctions are now vulnerable to the Chinese government exploiting their image as traitors "living off the fat of the land in exile."[59]

The "loyalty baggage" is particularly heavy for a political exile who is awaiting return. He is more susceptible to a home regime's charges of disloyalty than the immigrant who works to establish himself abroad, and "must try to identify his cause with the national interest, to give himself the psychological support to survive the constant political and socioeconomic pressure pushing him to abdicate his exile status."[60] The issue of loyalty from afar is also compounded by culture. Overseas Chinese, for example, have been traditionally inept in host and home politics and have preferred to concentrate on their internal affairs.[61] Moreover, some post-Tiananmen Chinese intellectual exiles still retain communist ideological residues; and even more critical, they are culturally dedicated to the Confucian political heritage that commands their highest allegiance to their country and nation. These exiles' fears of the "pluralist chaos" in the United States and their desire to escape the trap of "extreme individualism," make them highly vulnerable to the home government's depiction of them as traitors. Thus, they increasingly become hesitant in their opposition efforts and are more inclined to return home on Beijing's terms. In light of these tensions, one scholar of Chinese politics has recently questioned the democratic commitment of some post-1989 exiles.[62]

Finally, the impact of U.S. diasporic communities on the demise of communism in Eastern Europe has been accumulative rather than direct. Probably the most significant diasporic contribution to the erosion of communism was made by Jewish-American lobbies, which were pivotal in focusing the spotlight on the conditions and rights of Soviet Jewry. Jewish-Americans became personal emissaries of *refusniks*. Against the Nixon administration's official standing, they lobbied vigorously for the Jackson-Vanik amendment, which linked the USSR's most-favored nation trade status to its willingness to allow freer emi-

[58] See Antonio J. A. Pido, *The Pilipinos in America: Macro/Micro Dimensions of Immigration and Integration* (New York: Center for Migration Studies, 1986), 55–56.

[59] See Geremie Barmé, "Traveling Heavy: The Intellectual Baggage of the Chinese Diaspora," *Problems of Communism* 40 (January/April 1991): 98.

[60] Lewis J. Edinger, *German Exile Politics: The Social Democratic Executive Committee in the Nazi Era* (Berkeley: University of California Press, 1956), viii.

[61] See Lucian W. Pye, *Asian Power and Politics: The Cultural Dimensions of Authority* (Cambridge, MA: The Belknap Press of Harvard University Press, 1985), 252.

[62] See Barmé, "Traveling Heavy," 100.

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gration. All in all, postwar East European emigres were mostly ineffective in their struggle to free their captive nations, with some exceptions such as the Polish-Americans' support of Solidarity since 1981.[63] The relative weakness of the East European lobbies had little to do with questions of loyalty. The diasporas considered their home communist governments as enemies of their nations and stooges of a foreign regime, a position reinforced by America's aversion to communism. In fact, this mutual reenforcement eased the integration of East Europeans in the United States. The host country did not demand their abdication of home country's loyalty, but rather helped them in redefining their outward patriotism along the vision of freedom and democracy. This is also why so many diaspora members feel a swell of pride in the political and economic changes taking place in their native countries. On their visits to the United States, East European leaders like Lech Walesa, Václav Havel, Vytautas Landsbergis, and Sali Berisha of Albania have made direct patriotic appeals to their respective diasporas, offering them citizenship and encouraging their economic and political support. Diaspora members have responded with excitement. Many of them have assumed the role of cultural and political ambassadors between the United States and their native countries, others were offered key economic positions, and others even emerged as leaders and candidates of political parties (including a presidential candidate) in the old countries. In the homelands, diaspora members often enjoy added credibility and moral authority by virtue of being untainted by suspicion of collaboration and complicity with the former regime.

African-Americans and the Global Context

One of the most effective diasporic efforts to alter world politics in recent years was conducted by African-Americans. Through their mobilization and protest action against apartheid, they have managed to generate a historic shift in the U.S. foreign policy toward Pretoria, forcing the latter to move toward a nonracial democratic polity. Largely due to the 1986 Comprehensive Anti-Apartheid Act (CAAA) that passed in Congress over President Reagan's veto, South Africa released Nelson Mandela and other prisoners, legalized anti-apartheid organizations, lifted the State of Emergency, enabled exile return, repealed key apartheid laws, and entered negotiations with black organizations on the

[63] See Madeleine Nash, "From Polonia With Love," *Time*, 27 November 1989, 22-23.

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transition to democratic rule. These reforms, in turn, led to the termination of most of the U.S. economic sanctions by President Bush, on 10 July 1991 to the consternation of African-American leaders who insist that the conditions set by the CAAA have yet to be complied fully.[64]

The increasing involvement of African-Americans in Southern Africa is part and parcel of the evolution of their community and politics inside the United States. In this case the importance of diasporic politics is beyond the mere relevance of ethnic leverage over U.S. foreign policy; it rather represents a significant step into the long sought and yet unattained vision of African-American integration. The involvement in the South African struggle interjected African-Americans, perhaps for the first time, into American mainstream politics and values, as the diaspora lobby succeeded in establishing a symmetry between its own agenda and the American creed of freedom and democracy, thereby challenging the Reagan administration on its own rhetoric. By exploiting the growing legitimation of ethnic voice in U.S. foreign policy and by portraying their homeland's cause as an all-American concern, African-Americans were able to move one step forward toward their own domestic inclusion.

Black Americans have historically felt a sense of kinship with the land of their ancestors and in congruence with their own civil rights struggle in the United States have empathized with the racial and political aspirations of black Southern Africans. At least since the turn of the twentieth century, calls for international solidarity among blacks were part of African-American elites' effort to galvanize the black community for political action. In the 1920s and the 1930s, leaders like Marcus Garvey, W. E. B. Du Bois, and Paul Robeson endeavored to establish an international Pan-African movement to fight against colonial rule and white imperialism. After World War II, with the advent of the cold war, the campaign for black internationalism subsided as "black leaders felt obliged to confirm their loyalty to the United States and to demonstrate that their civil rights campaign was not communist inspired at a time when many conservative Americans were ready to believe that communist instigation lay behind black demands for civil equality."[65] During the next decade many black leaders

[64] See Randall Robinson, "After Sanctions: Apartheid and the African-American Collegian," *The Black Collegian*, September/October 1991, 132–139.

[65] Philip V. White, "The Black American Constituency for Southern Africa 1940–1980" in Alfred O. Hero Jr. and John Barratt, eds., *The American People and South Africa: Public Elites and*

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compromised much of their Pan-African agenda and concentrated their efforts on domestic improvements. In the late 1950s and 1960s, in light of the growing movement in Africa to terminate colonial rule, African-Americans demonstrated renewed interest in the homeland's reawakening. Their rejuvenation coincided with the acceleration of the domestic civil rights struggle. Malcolm X, for example, drew a parallel between the treatment of blacks in the United States and white colonialism in Africa, while other black leaders went as far to advocate the mobilization of volunteer black American troops to fight in the Southern African liberation struggles. Indeed, the 1960s represented black America's growing belief that "what happens to blacks in Africa has implications for blacks at home."[66] However, over the next few years, despite the success of the civil rights movement in breaking many social and economic barriers, black Americans were unable to translate their stake in Africa into an effective foreign policy lobby. This failure was the result of a schism between the emergent class of mainstream blacks, represented by the formation of the Black Congressional Caucus (BCC) in 1971, and the marginalized radical nationalists, Pan-Africanists, black Muslims, and Marxists, all of whom rejected the possibility and the desirability of integration into the larger polity.

In 1974, in an essay entitled, "Can the Blacks Do For Africa What the Jews did for Israel?" Martin Weil argued that though American blacks have had little impact on American policy toward Africa, "[s]ooner or later the United States will have to confront the emergence of powerful political pressure hostile to American policy in Africa."[67] He further argued:

> To be successful, a black movement for reform of American policy toward Africa must be perceived as a vehicle for exporting *American* ideals. It must be an affirmation of black faith in the United States and demonstration of black ability to manipulate the fine structure of American politics within the astuteness and finesse of previous practitioners. Blacks as blacks may identify with Africa, but it is only as Americans that they can change United States policy in Africa. . . . To aid the revolution abroad, blacks must first join the establishment at home.[68]

Policymaking Processes (Lexington, MA: Lexington Books, 1981), 83. Hereafter my analysis follows the author's, 83–102.

[66] Roger Wilkins, "What Africa Means to Blacks," *Foreign Policy* 15 (Summer 1974): 137.

[67] Martin Weil, "Can the Blacks Do for Africa What the Jews Did for Israel?" *Foreign Policy* 15 (Summer 1974): 109.

[68] Ibid., 127.

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Weil's projection began to appear in the mid-1970s. First, the extremist movements were shunted to the periphery of black politics, while the mainstream discovered the "secrets" of influencing American foreign policy, "an electoral threat, . . . a lobbying apparatus, . . . and a successful appeal to the symbols of American nationhood."[69] During the 1976 U.S. presidential election campaign, African-Americans made their mark on the Democratic party's platform by pushing the issues of independence for the white minority-ruled states of Southern Africa while African foreign policy in Washington was still centered around the East-West conflict. Most significant for the institutionalization of black political power in U.S foreign policy arena was the July 1977 establishment of TransAfrica, a black American foreign policy lobby focusing on African and Caribbean issues and led by lawyer Randall Robinson. Under him, the organization enlisted the support of many mainstream organizations like the NAACP and Africare and began a grassroots outreach program to mobilize African-American support for TransAfrica's foreign policy initiatives, especially with regard to South Africa. Dovetailing with the self-proclaimed pro-African interests of the Carter administration, TransAfrica's goals of mobilizing the African-American electorate enjoyed modest success.[70]

The link between the civil rights movement and the anti-apartheid struggle was reinforced during the years of President Reagan, who was perceived by the black leadership to be insensitive to civil rights issues in general, and uncaring on apartheid in particular. Black leaders were initially divided on how to respond to Reagan's challenge, especially since the president's popularity in the early 1980s rendered him "unassailable." But with the unfolding of an extended crisis situation in South Africa and in response to Pretoria's imposition of a partial state of emergency, apartheid provided a focus and power to attack the administration from the back door. Apartheid became a rallying cry for rejuvenating the 1960s, though this time not in the form of a domestic battle. Here, black Americans organized as insiders to set the conscience of American values back on track. Though the American Committee on Africa, the first anti-apartheid organization in the United States was founded in 1953, it was only during the 1980s that "civil right activists discovered in the fight [against apartheid] an effort

[69] Ibid., 109.

[70] See Peter J. Schraeder, "Speaking with Many Voices: Continuity and Change in U.S. Africa Policies," *The Journal of Modern African Studies* 29 (September 1991): 398–406.

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they could throw themselves into with gusto—and little moral ambiguity."[71] In the mid-1980s, therefore, black leaders could no longer be labeled disloyal. But as long as the reality of Mikhail Gorbachev's "new political thinking" was not seriously apprehended, there was a temptation to label those sympathetic to the African National Congress (ANC) as pro-communists.

The strategy of escalating the anti-apartheid campaign was devised by TransAfrica. The wave of protests, sit ins, and voluntary arrests caught like a wild fire across the nation. Apartheid became a principal political concern for local governments, towns, media, and universities pressured by black organizations to rid themselves of holdings that involved U.S. and foreign companies with interests in South Africa. The impact on elected representatives and the public at large was dramatic, and the political momentum paved the way for an unprecedented congressional coalition in the House and the Senate, which adopted the sanctions legislation. Then Senate majority leader, Bob Dole, acknowledged that the issue of sanctions "has now become a domestic civil rights issue."[72]

It is not surprising that the mobilization of the black diaspora against apartheid coincided with a renewed search for black identity in the United States; for example, the move to change the group appellation from black to African-American. Such alterations in terms had been introduced in various junctures of the struggle for black liberation and equality in the United States even before the Emancipation Proclamation.[73] Yet in the 1980s the lobby for "African-American" epitomized a strong perception that integration and political power at home have much to do with an alliance with a country and culture abroad. When in 1988 black leaders announced their preference for the term African-American, Jesse Jackson declared: "Every ethnic group in this country has a reference to some land base, some historical, cultural base, African-Americans have hit that level of maturity."[74]

The link between African-Americans and South Africa was accentuated further in 1990 during Nelson Mandela's first visit to the United States after his release from prison. Mandela enjoyed a hero's welcome.

[71] *Time*, 2 July 1990, 18.

[72] Cited in Pauline Baker, "The Sanction Vote: A G.O.P. Milestone," *New York Times*, 26 August 1986.

[73] See *Time*, 6 March 1989, 32; Stephan Thernstrom, "Just Say Afro," *The New Republic*, 23 January 1989, 10–12; *U.S. News & World Report*, 30 October 1989, 17; Doris Wilkinson, "Americans of African Identity," *Society* 27 (May–June 1990): 14–18.

[74] Cited in *Newsweek*, 2 January 1989, 28.

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One observer stated: "He fires the pride of African Americans and touches a deep desire in the psyche of Americans. . . . For the sometimes dispirited American civil rights coalition, Mandela provides . . . a rallying point and common cause. For the many blacks who have begun to call themselves African-Americans, he is a flesh-and-blood exemplar of what an African can be."[75] Ultimately, the identification with black South Africa has now become one of the critical tests for political allegiance to domestic black causes. When New York Mayor David N. Dinkins landed on South African soil on 12 November 1991 and proclaimed himself "finally home," an editorial in *The New York Times* stated that, "Mr. Dinkins seemed to be speaking as much to Brooklynites as to any listeners [in South Africa]."[76]

The success of the African-American lobby is an additional testimony to the power and legitimation of hyphenated groups in the United States. But the leverage of ethnicity places new challenges on diasporas that wish to affect American foreign policy at a time when the U.S. government has been more disposed to concerns over human rights and democratization. The struggle for self-determination tends to galvanize diaspora's unity—using the American rhetoric of democracy and freedom—against undisputed ethnonational foes. However, the attainment of the homeland's independence, which is not in accordance with the democratic principles, forces diasporas to make agonizing choices. If the homeland is ruled undemocratically, the diaspora may be required to make a clean break with the home government, side with its democratic opposition, or even cut down its ties with its home compatriots, with all the actual and psychological ramification of such action. If the diaspora chooses to cooperate with a nondemocratic home regime, however, it risks undermining its U.S. domestic reputation and loyalty status, especially if the prevailing American mood toward the home government is hostile.

The African-Americans' anti-apartheid struggle largely parallels the self-determination model of diasporic politics, as the white minority represents the obvious foe. Such is also the case for the majority of Arab-Americans who endorse Palestinian self-determination and consider Israel to be the adversary. But to sustain the democratic reputation a diaspora may have acquired in its campaign for a homeland's independence, it must continuously demonstrate its hostility to non-

[75] *Time*, 2 July 1990, 16–17.
[76] See "A 'Homecoming' for the Mayor," *New York Times*, 17 November 1991.

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democratic practices of a home native regime. During the cold war, Black American organizations, which were often criticized for accentuating the grievances of apartheid while overlooking abuses of black regimes, could vindicate their support of African governments that were ideologically hostile to democracy as a way of countering U.S. "imperialist intervention" via nondemocratic proxies. This was the case in Angola, where African-American organizations sided with the Angolan Marxist government against the United States sponsored UNITA rebels. However, in the aftermath of the cold war, when the prevailing perception in the United States is that the continuing support of dictatorships or military surrogates in regional conflicts is economically and politically imprudent, the rationale for siding with or acquiescing in the rule of black despots, or alternatively supporting one-party revolutionary regimes, is rapidly disappearing for the White House and for African-Americans alike. Accordingly, the U.S. State Department, seemingly motivated by TransAfrica's lobbying, is now pressing African countries to embrace democracy quickly or otherwise suffer economic penalties. Since 1991, African-American leaders have moved steadily to redefine their pro-Africa crusade along the democratic theme. They urge the administration and Congress to increase foreign assistance to democratically committed regimes and to cut off military and economic aid to regimes that resist democratic change and violate human rights.[77]

Without diminishing their contribution to the recent U.S. campaign to push African countries to embrace democracy, it must be remembered that for African-Americans the opposition to black dictatorial rule is relatively safe, as the homeland is symbolic and the consequences of a home government's retaliation are virtually nonexistent. This is not the case for diaspora communities directly tied to homelands whose regimes tend to hold insiders and outsiders hostages to their repressive rule. To become a meaningful and reliable voice for human rights, democracy, and self-determination, such diasporas need courageous leaders who are willing to take risks and make personal sacrifices.

Finally, the end of East-West tensions provides democracy with an opportunity and a challenge, since resurgent nationalism does not guarantee democracy. Newly emergent democratic regimes may not be able to meet the challenge of separatism, which the new nationalism possesses, and thus may fail to adhere to democratic liberal principles. While today diasporic calls for self-determination and democratic regime

[77] See statement of Randall Robinson before the Senate Foreign Relations Committee, 16 May 1991. I interviewed Mr. Robinson by telephone on 18 March 1992.

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change are more likely to be in line with American official policy, diasporas must also be aware of the tension between self-determination and democratic liberalism. Their political activity on behalf of their country of origin may strain American strategic interests; even more critically, it may have destructive consequences for their homeland compatriots. The acute danger posed by national awakening and secessionist drives is evident in former Yugoslavia, in the violent exchange in the former Soviet republics, in Czechoslovakia, in India, and even in Canada. In the ethnically divided poor countries of Africa, "winning or losing an election is [often] more of a life and death struggle than in well-off countries."[78]

Some have maintained that the perils of nationalism and the destructive impulse of ethnic separatism are increasingly penetrating the American republic. Though in the twentieth century the United States did not encounter any secessionist movement of serious proportion, many express their concern over the growing presence of multicultural ethnic zealots and Afrocentrics in American culture and education. In the words of Arthur M. Schlesinger, Jr., "they reject as hegemonic the notion of a shared commitment to common ideas," and thus may undermine "the idea of an over-arching American nationality."[79] The involvement of American diasporic communities in the politics of their homelands has occasionally fueled and exacerbated ethnic friction inside the United States—between Serbs and Croats, blacks and Jews, Greeks and Turks, etc. However, the dedication of diasporas to liberal-democratic causes in their countries of origin may also be seen, perhaps paradoxically, as an important contribution to the reinforcement of these values inside America. In fact, the fear of U.S. domestic Balkanization should be mitigated by the realization that the peculiar openness of American government to the influence of ethnicity has not only guided diasporic groups to champion the creed of political democracy and human rights around the globe, but also has pushed them to defend the principles of democratic pluralism at home.*

[78] See Tom Lodge, cited in "Democracy, The New Drug for Africa," *Reuters*, 17 March 1992.

[79] See Arthur M. Schlesinger, Jr., *The Disuniting of America: Reflections on A Multicultural Society* (New York: Norton, 1992), 117 and 74.

* An early version of this paper was presented at a conference on the Impact of International Migration on the Security and Stability of States, under the auspices of the Center for International Studies at M.I.T. (December 1991). I would like to thank Myron Weiner, Nathan Glazer, and Murray Dry for helpful comments on an earlier draft. Michael Levin and Christina Yim provided valuable research assistance. Part of the research was funded by a grant from International Fulbright and the American Council of Learned Societies.

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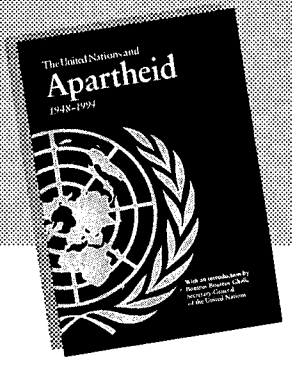

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Separate Branches—Separate Politics: Judicial Enforcement of Congressional Intent

CORNELL W. CLAYTON

The paralysis that characterized American politics during the 1980s generated new interest in the separation of powers. While traditional studies of separation of powers focused on constitutional-level conflicts between Congress and the president, recent scholarship instead focuses on courts and the administrative state. There is good reason for this shift of emphasis: the erosion of political parties and the emergence of divided government as a regular feature of American politics since 1968 have enhanced the value of the bureaucracy and the judiciary as forums for ordinary policy making.

Rather than focusing on these broad structural and institutional developments as causes of legalization of the administrative state, many conservative critics have portrayed judges, particularly in lower courts, as unilaterally intervening to usurp administrative authority. According to this view, judges shackled administrative agencies by creating unreasonable requirements for regulatory rulemaking and by refusing to defer to agency interpretations of statutory standards and

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duties. At the heart of this view was a straight-forward political complaint: judges used statutory review as a pretext for thwarting the policy agenda of conservative presidents and for imposing their own liberal policy preferences on the bureaucracy. Now that the White House is controlled by Democrats and the Congress by Republicans, such complaints may come from a new quarter, and it remains important to consider them.

In order to stop lower courts from usurping presidential authority, Justice Antonin Scalia and other critics have urged the Supreme Court to adopt new standards of statutory review that would restrict lower court discretion to examine congressional intent and would require maximum deference to executive branch decision making. The aim of the new standards is to "liberate" administrative agencies from judicial oversight in all but the most egregious cases. The Supreme Court's decision in *Rust v. Sullivan* (1991), upholding the Bush administration gag rule on federally funded medical clinics, is just one recent indication that the Court has moved toward such a standard for review of administrative actions.

This article examines the institutional assumptions behind the conservative account of developments in administrative law. It argues that their analysis inappropriately focused on the role of judges and courts, rather than on Congress and the president, and that their prescription for liberating the executive from strict standards of statutory review, especially during periods of divided government, should be rejected.

Fettering or Subservience?

The recent indictment against the judiciary is a familiar one. Since the 1960s, courts have fettered the administrative process by judicializing rulemaking, by demanding synoptic decision making of administrative agencies, and by refusing to accept agency interpretations of statutory duty. The rediscovery of administrative law as a focus of political inquiry, however, involves the institutional implications of these developments. While the judiciary is viewed as the culprit, the presidency is portrayed as the victim. Courts, conspiring with congressional staffers, liberal interest groups, and recalcitrant bureaucrats, have blunted presidential leadership. Jeremy Rabkin and Gordon Crovitz complain of "judicial compulsions" leading to a "fettered presidency."[1] Martin Sha-

[1] Jeremy Rabkin, *Judicial Compulsions* (New York: Basic Books, 1989); and L. Gordon Crovitz and Jeremy Rabkin, eds., *The Fettered Presidency* (Washington, DC: American Enterprise Institute, 1989).

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piro describes a "judicial arrogance" robbing the executive of energy and forcing its own policy preferences on the administrative agencies.[2] And Shep Melnick has argued that "iron rectangles" strip the president's ability to bring coherence to administrative policy making.[3] The enfeebling of the presidency is in turn blamed for policy stagnation, bureaucratic drift, and erosion of accountability.

However, while the conservative critique describes a shift in the power of institutions, it fails to offer structural explanations for why that shift has occurred. Judges are seen as simply being obsessed with the virtues of the legal process or unsympathetic to the problems of administration. Usually the analysis reduces to a thoroughly realistic argument: Judges are partisan political actors and judicial intervention is not neutral; it has advanced liberal, pro-regulatory interests and thwarted conservative, deregulatory interests.[4] Given these assumptions, judicial intervention in the administrative process is viewed as antidemocratic and institutionally dysfunctional.[5] Judicial appeals to congressional or statutory intent only mask the true ideological motives judges have for reversing policy decisions made by the executive branch of government.[6]

While it is true that tensions between judges and administrators deepened during the 1980s, the existence of tensions does not lead to the conclusion that courts usurped authority. Constructive tension is expected to exist between courts and administrative agencies. Judges perform a variety of duties that will frustrate administrators: they must ensure that government officials do not trespass constitutional rights, violate clear legislative commands, or act in an arbitrary or capricious manner.[7] Administrators will at times feel that individual

[2] See Martin Shapiro, *Who Guards the Guardians?* (Athens: University of Georgia, 1988); also see Shapiro, "Prudence and Rationality Under the Constitution" in Gary Bryner and Dennis Thompson, eds., *The Constitution and the Regulation of Society* (Provo, UT: Brigham Young University, 1988).

[3] See R. Shep Melnick, "The Politics of Partnership," *Public Administration* 45 (November/December 1985): 654.

[4] A good brief description of the "new critique's" separation of powers argument and the realistic assumptions behind it is found in Crovitz and Rabkin, *The Fettered Presidency*, 3-12.

[5] Peter Strauss, for instance, argues that the Framer's intended to extend nearly absolute presidential control over the administrative bureaucracy because of their belief that the president would "bear focused political accountability for the work of law execution and serve as an effective political counterweight to Congress." Strauss, "The Place of Agencies in Government: Separation of Powers and the Fourth Branch," *Columbia Law Review* 84 (April 1984): 600.

[6] See especially Rabkin, *Judicial Compulsions*, 81.

[7] See Phillip J. Cooper, "Conflict or Constructive Tension: The Changing Relationship of Judges and Administrators," *Public Administration Review* 45 (November/December, 1985): 643.

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judges or courts are over zealous in performing these tasks. Likewise, judges will on occasion make mistakes or allow personal preferences to cloud judicial opinion.

Criticizing individual decisions, however, is not the same as criticizing the judiciary's constitutional obligation to ensure executive compliance with the law. The controversy surrounding recent judicial developments in administrative law is not about whether courts have become more active in the administrative process or whether less judicial involvement is desirable. Instead, it raises a normative question: has judicial intervention been improper? To answer it requires an examination of the justifications *for*, not just the extent *of*, judicial intervention. Have courts placed improper or unconstitutional restraints on administrative policy making?

The judiciary's conservative critics have used case studies of lower court decisions to argue that they have.[8] While lower court decisions tell us about the actions of particular judges or courts, focusing on isolated examples of judicial excesses, cases noteworthy because they are exceptional, does not yield institutional-level conclusions. Analysis of trends between the executive and judicial branches must be grounded in the doctrines enunciated at the Supreme Court level.

An examination of recent Supreme Court decisions in administrative law indicates that rather than usurping authority, the Court has displayed extraordinary deference to administrators and the presidency during the last two decades. Although a thorough examination of the Court's jurisprudence in this area is beyond the scope of this article, the point can be made by even a cursory review of recent cases in four important areas: agency rulemaking; agency interpretation of statute; agency enforcement actions; and separation of powers cases involving the administrative bureaucracy.

[8] See especially Rabkin, *Judicial Compulsions*; and Melnick, *Regulation and the Courts* (Washington, DC: Brookings, 1983). An exception to this is Martin Shapiro. Rather than offering case studies, he focuses on doctrinal development, but he too offers little analysis of Supreme Court action. His account of the Court's jurisprudence in this area is a brief discussion of only three cases, in two of which the Court upheld the administrative agency's position. Consequently, Shapiro admits that an examination of actual Court decisions presents "a rather open field." That is why, he says, it "is sensible to present the current tendencies in judicial review of agency rulemaking as general ideas rather than to try to parse the opinions of the Supreme Court in order to come up with a definite statement of precisely what the law is at the moment." What he means is that his conclusions cannot be supported if we analyze actual Court decisions. See Shapiro, *Who Guards the Guardians?* 167.

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The standard for lower court review of administrative rulemaking was established by the Supreme Court in *Mathews v. Eldridge* (1976).[9] In *Eldridge* the Court created a balancing test under the Administrative Procedures Act of 1946 (APA) for resolving process claims against administrative agencies.[10] In this case, the Court upheld an agency refusal to give social security recipients a hearing prior to termination of benefits. The Court explicitly recognized fiscal and administrative constraints as major factors in determining how far agencies must go to accommodate claims under the APA. The right of hearing prior to termination was viewed as an unreasonable burden on agency resources. Since 1976, the Court has consistently rejected calls for further expansion of administrative due process rights and even relaxed requirements imposed under earlier decisions.[11]

Further restrictions on lower court review of agency rulemaking were enunciated by the Court in *Vermont Yankee Nuclear Power Corporation v. United States* (1978).[12] In this case the Court chastised lower courts for fashioning common law procedural requirements beyond those found in the APA. Although the Court did not resolve questions about the amount of deference due agencies under the framework of the APA, it nevertheless prohibited lower courts from constructing extrastatutory restraints on rulemaking. With this authority removed, lower federal courts have become largely a passive force in the development of the administrative rulemaking process.[13]

Instead, recent expansions in rulemaking requirements have come from executive orders requiring layers of review by the Office of Management and Budget (OMB), not from judicial decisions. This process began when the Nixon administration began requiring OMB to perform "quality of life reviews" and was followed by President Gerald Ford's requirement that agencies consider inflationary impact of new rules. President Jimmy Carter expanded the process further when he created an Office of Information and Regulatory Affairs (OIRA) within OMB, authorizing it to study all new rules. The Reagan administration greatly expanded the power of OMB and the complexity of administra-

[9] 424 U.S. 319 (1976).

[10] P.L. 404, Stat. 237 (1946).

[11] See *Bishop v. Wood*, 426 U.S. 341 (1976); *Ingraham v. Wright*, 430 U.S. 651 (1977); *Board of Curators v. Horowitz*, 435 U.S.78 (1978); *Parham v. J.R.*, 422 U.S. 584 (1979); *Schweiker v. McClure*, 72 L. Ed 2d 1 (1982).

[12] 435 U.S. 519 (1978).

[13] See Cooper, "Conflict or Constructive Tension," 645.

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tive rulemaking by signing Executive Order 12,291, which requires a cost-benefit and a least-cost analysis of new rules; and Executive Order 12,498, which requires agencies to obtain OMB approval before taking any "significant steps" toward making a new rule.[14]

Despite these layers of administrative review added by successive presidents, the Supreme Court continued its deferential posture toward administrative agencies. In the most notable administrative law decision in recent years, *Chevron v. Natural Resources Defense Council* (1984), the Supreme Court restricted lower court power by limiting review of agency interpretations of statute.[15] In *Chevron* a unanimous Court upheld the Environmental Protection Agency's (EPA) controversial interpretation of the "new source" provision of the 1970 Clean Air Act. The EPA's interpretation significantly relaxed the burden placed on industry to upgrade to more expensive, cleaner equipment. It did this even though it agreed with the court of appeals that the "purpose of the act" would be best served under a different interpretation than the one adopted by the agency. The Court said that in the absence of clear evidence to the contrary lower courts should defer to any reasonable interpretation adopted by the agency. If the statute is "silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction."[16]

In *Chevron* the Court prohibited lower courts from making *de novo* interpretations of statute and rejected the argument that agencies must choose "the best" rule. Rather, the Court recognized that more than one reading of statute is possible and that political considerations could legitimately influence statutory interpretation. Applauding the Court's decision, Kenneth Starr, solicitor general for the Bush Administration, remarked that it removes "the most obvious avenue for [lower] courts seeking to avoid deference to a particular agency interpretation."[17]

Taken together, the standards of review established by the *Eldridge*, *Vermont Yankee*, and *Chevron* line of cases constitute a potent bar to unwarranted lower court intervention into the administrative process. Only one major Supreme Court decision in recent years, *Motor Vehicle Manufacturers v. State Farm Insurance Company* (1983), appears to

[14] See Alan Morrison, "OMB Interference With Agency Rulemaking: The Wrong Way to Write a Regulation," *Harvard Law Review* 99 (March 1986): 1059.

[15] 104 S.Ct. 2778 (1984).

[16] Ibid., 2782.

[17] Ibid., 294.

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run counter to the Court's deferential posture.[18] In this case an agency was prohibited from rescinding a regulation previously adopted—the requirement that automobile manufacturers install passive restraint systems—until it compiled a reasonable record that supported its change of policy.

The Court's apparent contradiction between *State Farm* and the Court's other recent opinions, especially *Chevron*, has been criticized as a Court "picking and choosing" when it wants to defer.[19] Careful reading of *State Farm*, however, shows why there is no contradiction. The *Chevron* standard was implicitly upheld in *State Farm* when the Court concluded agencies could adopt more than one approach to their statutory duty, so long as they acted reasonably. What the Court rejected was the administration's argument that repealing a rule was the same as a decision to not issue a rule in the first instance. Traditionally, courts have recognized nearly absolute executive discretion regarding the decision whether to initiate enforcement action. In *State Farm*, however, the Court distinguished the active step an agency takes in repealing a rule from the inaction of not issuing a rule.

The Supreme Court also recently reaffirmed its broad deference to agency inaction. In *Heckler v. Chaney* (1985), inmates on death row sued the Federal Drug Administration (FDA) to prevent drugs from being used in executions by lethal injection.[20] The suit charged that the use of the drugs in human executions violated the "misbranding" and "new drug" provisions of the Food, Drug and Cosmetic Act.[21] The FDA claimed that it had "inherent discretion" to refuse to act unless there was "a serious threat to public health or a blatant scheme to defraud" and that such conditions were not present. The Court agreed, overturning the lower court, arguing that unless "the substantive statute has provided guidelines for the [agency] to follow in exercising its enforcement powers [an] agency's decision not to take enforcement action should be presumed immune from judicial review."[22]

The Court's traditional recognition of broad prosecutorial discretion and the equivalent administrative decision to not take enforcement action, recognized in *Chaney*, flow from a long-standing concern about

[18] 463 U.S. 29 (1983).

[19] See Shapiro's discussion in Bryner and Thompson, *The Constitution and the Regulation of Society*, 231.

[20] 105 S.Ct. 1649 (1985).

[21] 21 U.S.C. Sec. 352(f), 355 (1982).

[22] 105 S.Ct. 1656.

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intrusion upon the executive branch's constitutional authority.[23] The Court's commitment to comity in such cases is clear and unambiguous.

That commitment is further evidenced by the Court's willingness to uphold the president's constitutional authority to control the executive function during separation of powers conflicts with Congress. In cases where Congress and the president have clashed over control of the administrative state, the Court has usually accepted the executive's formalistic view of the separation of powers, which posits a unitary executive under presidential control.[24]

Although there are good reasons to reject this model of separation of powers adjudication, the Court's insistence on it has led to the invalidation of nearly every major effort by Congress to secure a greater role in administration. In *Buckley v. Valeo* (1976) the Court, at the behest of the Justice Department, invalidated a provision in the Federal Election Campaign Act of 1971 which would have allowed Congress to appoint members of the Federal Elections Commission.[25] In *INS v. Chadha* (1983) Justice Department attorneys convinced the Court to strike down the legislative veto as an intrusion on the executive function.[26] In *Bowsher v. Synar* (1986) the Court, again at the urging of the Justice Department, struck down the Gramm-Rudman-Hollings deficit reduction law because it vested executive authority in the comptroller general, an officer removable by Congress.[27]

The only major exception to the Court's deference to presidential power in recent separation of powers disputes came in *Morrison v. Olson* (1988), where the Court upheld the independent counsel provisions of the 1978 Ethics in Government Act.[28] By providing for fixed

[23] For an argument that the Court has been too deferential to agency inaction, see Cass Sunstein, "Reviewing Agency Inaction after *Heckler v. Chaney*," *University of Chicago Law Review* 52 (Summer 1985): 653.

[24] For a discussion of the Court's adherence to a formalistic view of the separation of powers in the administrative arena, see Harold Bruff, "On the Constitutional Status of Administrative Agencies," *American University Law Review* 36 (Winter 1987): 496.

[25] 424 U.S. 1 (1976).

[26] 462 U.S. 919 (1983).

[27] 478 U.S. 714 (1986).

[28] In *Mistretta v. United States*, 109 S.Ct.647 (1989), the Court rejected the Justice Department's contention that the unitary executive barred congressional creation of the United States Sentencing Commission. The Court upheld location of the commission within the judicial branch and statutory restrictions on presidential removal authority over its members. Although the commission performs some rulemaking functions, the Court pointed out, the only effect of such rules is to limit the discretion of federal judges when imposing sentences, a discretionary function wholly belonging to the judiciary. For this reason the case is not analogous to other separation of powers confrontations involving control over the administrative bureaucracy.

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tenure and judicial appointment of independent counsels, the act, passed in the wake of Watergate, was an effort to codify an independent prosecutorial power in cases involving high ranking executive branch officers. To insist that the separation of powers required the president to control prosecution in such cases, even though prosecution is traditionally considered an executive function, would have been to ignore the obvious conflict of interest inherent in such cases and to obviate the purpose of a separation of powers.[29]

Whatever may be said of individual lower courts, the Supreme Court has displayed extraordinary deference to the executive in cases where statutory or constitutional standards regarding control of the administrative bureaucracy are ambiguous. The Court's decisions in recent separation of powers cases such as *Buckley*, *Chadha*, or *Bowsher*, can hardly be read as judicial collusion with Congress to fetter the presidency. Nor can the sweeping nature of its pronouncements in cases dealing with the exercise of administrative discretion such as *Chevron* and *Chaney* be construed as usurpation of administrative discretion.

However, the Court's emerging jurisprudence in administrative law has grave implications for democratic control over policy making during periods of divided government. During the 1991 term, for instance, the Court used the maximum deference standard to uphold the Bush administration's controversial abortion gag rule in *Rust v. Sullivan*.[30] The rule issued by the Department of Health and Human Services (HHS) restricted doctors working in federally funded clinics from engaging in abortion counseling or referral. The new rule radically altered the meaning of a twenty-year-old law, the Public Services Act of 1970, Title X of which prohibited the appropriation of federal funds to "programs where abortion is a method of family planning." For more than eighteen years, during four different presidential administrations, the statute had been interpreted by administrators and judges alike as restricting abortions only, not abortion counseling and referral.

Upholding this policy change, the Court, however, framed the issue as whether the administration's gag rule could be justified under any "plausible construction" of the language in Title X. Consistent with

[29] For a contrary view, see Terry Eastland, *Ethics, Politics and the Independent Counsel: Executive Power, Executive Vice* (Washington, DC: National Legal Center, 1989).

[30] *Rust v. Sullivan*, 111 S.Ct. 1759 (1991). For a discussion of the *Chevron* standard, see Kenneth Starr, "Judicial Review in the Post-Chevron Era," *Yale Journal on Regulation* 3 (Spring 1986): 283.

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the *Chevron* precedent, the Court concluded that when the plain language of a statute is ambiguous, as it was in this case, "we must defer to the [agency's] permissible construction of the statute."[31] Stunned by the Court's decision, both houses of Congress in November 1991 passed legislation overturning the HHS rule. President George Bush, however, vetoed the measure, and the House of Representatives fell eleven votes short of mustering the two-thirds margin required to override.[32]

In angry dissents, Justices Harry Blackmun, Thurgood Marshall, John Paul Stevens, and Sandra Day O'Connor pointed out that the Court's decision allowed HHS to reverse the most obvious interpretation of its statutory duty in order to adopt one that raised serious constitutional questions. For at least two of the dissenters, the administration's rule violated the First and Fifth Amendments by imposing content-based restrictions on the speech of Title X fund recipients, a condition, they argue, Congress clearly could not have intended.[33] More broadly, the dissenters argued that the Court, in its haste to defer to the administration's anti-abortion policy preferences, abandoned its own long-standing canon of statutory construction that required it to adopt the interpretation most consistent with the Constitution unless such a construction is plainly contrary to the intent of Congress.[34]

In this case, the new standards of administrative review were so pliable that the Court not only condoned reversal of a long-established interpretation of statutory meaning, it allowed the president to attach an otherwise unconstitutional condition to the receipt of public funds. Ironically, the gag rule, upheld as a "plausible" interpretation of Congress' intent, remains in force even after overwhelming majorities in Congress rejected it. The Court's willingness to abandon what it thinks Congress intended and defer to an agency interpretation of statute that is constitutionally dubious, and then to witness the president use his veto power to prevent corrective legislation must be viewed with alarm. As *The New York Times* editorialized, the practical effect of the Court's standard in this case was nothing short of permitting the administration to "make law backwards."[35]

[31] Ibid., at 1769.
[32] Anthony Lewis, "How Freedom Died," *The New York Times*, 22 November 1991.
[33] Blackmun and Marshall dissent, 111 S.Ct. 1759 (1991), 1781–86.
[34] Ibid., O'Connor dissent, at 1788.
[35] Editorial, "Making Law Backwards," *The New York Times*, 27 November 1991.

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The Attack on Congress

If the judiciary has been servile to the executive, why then did conservatives complain? What should be clear by now is that the real source of conservative frustration was not the judiciary, but the Congress. Rather than courts acting to usurp administrative authority, developments in administrative law might better be characterized by judges confronting administrators who sought to circumvent the intent of Congress, even when that intent was spelled out in clear terms.

The use of administrative strategies of policy making, especially during the 1980s, brought agency administrators increasingly into conflict with Congress and congressional statute.[36] The administrative presidency strategy has been widely discussed in postmortem accounts of the Reagan administration.[37] The strategy was spelled out in surprising detail and candor even before Reagan assumed office in 1980. In the Heritage Foundation's *Mandate for Leadership* series, conservative scholars offered the incoming administration a practical, agency-by-agency guide for politicizing the administrative bureaucracy.[38] With this 1,100 page document as a blueprint, the administration hit the ground running in its efforts to maximize and centralize administrative policy making. Key regulatory agencies were headed by ideologues who opposed the agency's regulatory mission. The Office of Management and Budget and the Office of Personnel Management were used strategically to maximize and centralize control over administrative policy making. Federal litigation was used instrumentally to expand administrative discretion and executive prerogative and to challenge congressional efforts to extend itself into the administrative arena. And finally, judges who were willing to defer to executive branch policy were appointed to the federal bench.[39]

[36] The administrative presidency strategy is an approach by which presidents attempt to alter the goals and objectives of federal agencies by seeking change directly at the administrative level. The strategy has been widely discussed in political science literature. See especially Richard Nathan, *The Administrative Presidency* (New York: Wiley, 1983); Terry Moe, "The Politicized Presidency" in Chubb and Peterson, eds., *The New Direction in American Politics* (Washington, DC: Brookings, 1985); and Richard Waterman, *Presidential Influence and the Administrative State* (Knoxville: Tennessee University Press, 1989).

[37] See, for example, Bert Rockman, "The Style and Organization of the Reagan Presidency" in Charles Jones, ed., *The Reagan Legacy: Promise and Performance* (Chatham, NJ: Chatham House, 1988); Waterman, *Presidential Influence*.

[38] Charles Heatherly, ed., *Mandate for Leadership: Policy Management in a Conservative Administration* (Washington DC: Heritage Foundation, 1981).

[39] See C. Boyden Gray, "Special Interests Regulation and the Separation of Powers" in Crovitz and Rabkin, eds., *The Fettered Presidency*, 211–224; and Theodore Olson, "The Impetuous Vortex:

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The Reagan administration not only returned to the administrative presidency strategy; it perfected it. In two areas in particular the Reagan administration represented an evolution of the strategy: through Executive Orders 12,291 and 12,498 the administration transformed OMB into a much more potent pre-regulatory screen of administrative agency rulemaking.[40] The effect was to reduce dramatically the number of new regulations promulgated by government agencies. Between 1980 and 1989, the last year of the Reagan administration, the number of pages in the *Federal Register* fell steadily by more than 26 percent, a crude but useful indicator of regulatory activity.[41]

A second evolution of the strategy came with the administration's focus on the Department of Justice, especially the solicitor general's office, to gain control over the postregulatory activities of the bureaucracy. By appointing highly partisan figures such as Edwin Meese, Charles Fried, Paul Bator, Bradford Reynolds, Bruce Fine, and Charles Cooper to top posts at the Justice Department, the administration was able to screen agency access to the courts and thereby blunt regulatory policies it opposed. During the Reagan administration the solicitor general's office, which reviews all agency appeals from lower court decisions, authorized just 7 percent of agency appeals, a lower percent than any previous administration and only about half the amount authorized during the Carter years.[42]

Even in those administrative law cases where the Justice Department authorized appeal, it often altered or reversed statutory interpretations adopted by the agencies charged with their enforcement. In *Bob Jones v. United States* (1983), for instance, the Justice Department attacked a long-standing interpretation of internal revenue laws.[43] The Internal Revenue Service (IRS) policy, adopted in 1970 and enforced under both Republican and Democratic administrations, held that schools that discriminated on the basis of race did not qualify as "charitable institu-

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Congressional Erosion of Presidential Authority" in Crovitz and Rabkin, eds., *The Fettered Presidency*, 225–244.

[40] Morrison, "OMB Interference with Agency Rulemaking."

[41] "Aides Urge Bush to Impose Moratorium on Regulations," *The New York Times*, 21 January 1992.

[42] These figures are extracted from the attorney general's annual reports from 1977 through 1985. I presented a systematic and complete account of the solicitor general's activities in screening agency appeals in "The Administrative Presidency and the Role of Courts in Administrative Law" (paper presented at the annual meeting of the American Political Science Association, San Francisco, California, August 1990).

[43] 461 U.S. 574 (1983).

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tions" as intended by Congress. Such institutions were therefore ineligible for tax exempt status under the internal revenue code. After successfully defending this policy in the lower courts, on appeal to the Supreme Court in 1982, the Reagan Justice Department actually reversed positions in the case and sided with the university against the IRS.[44]

Attacking the statutory interpretation adopted by the same agency charged with enforcement, the solicitor general advanced the disingenuous argument that the IRS lacked authority to effect substantive policy changes without explicit statutory authorization from Congress. In short, the administration was asking the Court to accept a standard of review in this case that it had argued against in nearly every other administrative law case: namely, that judges should not defer to reasonable interpretations of statute made by administrative agencies. The Court, no doubt surprised by the Justice Department's tactical switch of sides, rejected the argument and upheld the IRS policy.

While the rhetoric and substantive agenda of the Bush administration was less confrontational, the basic structural perspectives and institutional relationships between Congress, the White House, and the bureaucracy established during the Reagan years continued.[45] In cases such as *Rust*, the Bush administration displayed little hesitation about reversing long-standing administrative policy positions or about ignoring evidence of congressional intent. Indeed, the Bush administration went even further to bring administrative policy making under the president's political control by institutionalizing new regulatory screening mechanisms. President Bush activated a new Council on Competitiveness headed by Vice-President Dan Quayle and White House Legal Council Boyden Gray, which served as yet another screen of regulatory rulemaking.[46] Council members in 1992 convinced President Bush to impose a three-month trial moratorium on all new regulations.[47] Certain exceptions were allowed for regulations the Council deemed to be required by statute or likely to have a beneficial effect on the economy. The moratorium was criticized by congressional leaders, especially Representative John Coyers Jr., chair of the House Govern-

[44] For an account of the Justice Department's switch, see Lincoln Caplan, *The Tenth Justice: The Solicitor General and the Rule of Law* (New York: Random House, 1987), 51–64.

[45] See Robert J. Spitzer, "Presidential Prerogative Power: The Case of the Bush Administration and the Legislative Power," *Political Science and Politics* 24 (March 1991): 38.

[46] See Dana Priest, "The Secret (Maybe Illegal) Life of the Competitiveness Council," *Washington Post Weekly*, 25 November 1991, 33.

[47] "Aides Urge Bush to Impose Moratorium on Regulations," *The New York Times*, 21 January 1992.

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ment Operations Committee, and Senator John Glenn, chair of the Committee on Governmental Affairs, who charged that it improperly infringed on the ability of federal agencies to carry out their statutory duties.[48]

Among its other consequences, the administrative presidency strategy as pursued during the 1980s, altered the relationship between the three branches of government. The judiciary, which formerly protected the processes of democratic policy making when it deferred to executive branch agencies, suddenly found itself having to confront the executive in order to protect the democratically made policies passed by Congress.

One of the most egregious examples of executive branch evasion of statutory duty involved the Competition in Contracting Act of 1984 (CICA). An attempt to control corruption in federal contracting, the act allowed the comptroller general to stay federal contract awards if challenged by a losing bidder. Conflict over its enforcement began when, after signing the CICA, President Reagan nevertheless asserted that the stay provision of the act was unconstitutional and that he would refuse to implement that portion of the law. In a series of cases, the Third and the Ninth Circuit Courts upheld the act and rejected Justice Department arguments challenging its constitutionality.[49] The Ninth Circuit, in particular, noted that the president was failing to fulfill his "constitutional duties to faithfully execute the law" and reprimanded the administration for failing to act in good faith. Despite its losses, the administration continued a nonenforcement strategy. It was finally forced to reverse itself in 1986 when the chairman of the House Judiciary Committee threatened to cut off Justice Department funding in retaliation.[50]

A similar breach of comity was at the center of the Superfund scandal that forced Anne Burford, Rita Lavelle, and other top EPA officials from office in 1983. In this case, not only did EPA administrators refuse to enforce provisions of statute, but when Congress investigated, the EPA refused even to comply with requests for information about its Superfund enforcement activities.[51] When Congress issued

[48] Ibid.

[49] *Lear Sieler, Inc. v. Lehmen*, 842 F.2d. 1102 (9th Cir. 1988); see also *Ameron, Inc. v. U.S. Army Corps of Engineers* 787 F.2d 875 (3rd Cir. 1986).

[50] U.S. Congress, House Committee on the Judiciary, *Hearings on Department of Justice Authorization and Oversight, 1986*, 99th Cong., 1st sess. (1986), 67–72.

[51] For a discussion of the entire scandal, see United States Congress, House Committee on Public Works and Transportation, *Contempt of Congress: Report on Congressional Proceedings Against*

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subpoenas for the information, the administration shifted the dispute into the courts, escalating the conflict into a constitutional claim of executive privilege. In dismissing the suit as frivolous, the D.C. District Court chastised Justice Department attorneys for transforming a political dispute into a legal confrontation and urged the administration to settle its differences with Congress "without further judicial involvement."[52]

These types of administrative law conflicts became common during the 1980s. In areas ranging from environmental protection and defense contracting to civil rights, the executive branch not just ignored, but has systematically undermined the policies Congress enacted in statute.[53] In response, Congress sought new ways to restrict the scope of administrative noncompliance tactics. It resorted to micromanagement, the use of legislative veto provisions, intensifying its oversight activities, writing detailed agency forcing statutes, and creating alternative enforcement mechanisms. These mechanisms range from the use of private rights of action embedded in regulatory statutes to creation of the federal independent counsel's office.

Congress's search for independent enforcement mechanisms is not new. Throughout the nineteenth century Congress sought ways to buffer certain department and agency heads from presidential removal power through such devices as the Tenure of Office Act.[54] Beginning in the 1890s, it began creating independent regulatory commissions, which ever since have bedeviled American constitutional theory.[55] However, the new nonexecutive enforcement regimes that have emerged during the past two decades are different in both scope and degree than earlier efforts. Not only do they strip from presidential control core executive functions, such as criminal prosecution, but they also disperse powers broadly in nongovernmental actors, creating private attorneys general through fee-shifting legislation and giving private litigants the right to sue regulatory agencies and agency administrators.[56]

Anne M. Gorsuch, Administrator, U.S. EPA for Withholding Documents, House Report No. 97-968, 97th Cong., 2d. sess. (1982).

[52] *United States v. House of Representatives*, 557 F. Supp. 150 (D.D.C. 1983).

[53] For a discussion of the Reagan administration efforts to gut civil rights statutes, see Barbara Wolvovitz and Jules Lobel, "The Enforcement of Civil Rights Statutes: The Reagan Administration's Record," *Black Law Journal* 252 (Winter 1986): 9.

[54] 14 Stat. 430 (1867).

[55] For a discussion of the history of the conflict over the president's authority to control and remove administrative officers, see Louis Fisher, *Constitutional Conflicts between Congress and the President* (Princeton, NJ: Princeton University Press, 1985), 60–94.

[56] This point is made forcefully by Jeremy Rabkin in *Judicial Compulsions*, 39–75.

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Conservative scholars correctly argued that such developments were undesirable. There is logic to the argument that democratic accountability can be maintained only when responsibility is fixed directly in elected officials. Moreover, most in Congress would agree with Congressman James Florio that: "Congress is poorly suited institutionally for the task of detailed rulemaking and program administration . . . [and] the interest of the public is best served by Congress' customary reluctance to immerse itself in the details of implementation."[57]

However, it is here that the conservative failure to account for macrolevel political context between Congress and the executive undermines their understanding of recent developments in administrative law. Congress, Florio notes, was "provoked into assuming its new regulatory role" as the result of "recalcitrant administrative agencies" that have "abdicated statutory obligations" in favor of presidential policy directives.[58] When lower courts were asked by Congress, or more likely by private litigants, to enforce statutory intent, it must be understood that they acted within the context of electoral dealignment and divided government. It was no longer safe to assume that administrators are making good faith efforts to implement congressional policy. The problem for administrators during the 1980s was not that lower court judges usurped executive branch authority. Rather, it was that they proved too willing to insist that agencies carry out policies clearly intended in congressional enactments. It *is*, Judge Skelly Wright observed, that judges were willing "to see that the legislative purposes heralded in the halls of Congress, are not lost in the vast halls of the federal bureaucracy."[59]

Indeed, the Supreme Court's new standards of deference to administrative action have a second edge to them. For several years, Justice Scalia argued that not only should lower courts defer to the executive, but they should ignore congressional intent almost entirely as a basis for reviewing administrative action. For Scalia, what is important is the language of statute alone, not Congress's efforts to explain what statutes mean through committee reports or legislative histories. In at least two cases during the Court's 1990–1991 term – *Wisconsin Public Intervenor v. Mortier*,[60] dealing with a Wisconsin town's efforts to

[57] Florio, "Congress as Reluctant Regulator," *Yale Journal on Regulation* 3 (1986): 351, 380.
[58] Ibid., 352.
[59] *Calvert Cliffs Coordinating Committee v. AEC*, 449 F.2d 1109,1111 (D.C. Cir. 1971).
[60] 111 S.Ct. 2476 (1991).

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impose pesticide regulations, and *West Virginia University Hospitals v. Casey*,[61] dealing with the awarding of expert witness fees in civil rights cases—Scalia chastised lower courts for relying on legislative history for the construction of statute. We are "a government of laws, not of committee reports," he said in *Wisconsin*.[62]

This literalist or textualist approach to statutory interpretation, combined with the standards of maximum deference to the executive established in *Chevron*, gave full sway to efforts to circumvent congressional policy making and replace it with presidential fiat.

This broad based assault on Congress's ability to control policy runs throughout the Supreme Court's recent decisions regarding political control of the administrative bureaucracy. It ties together the Court's decisions in separation of powers cases such as *Buckley* and *Chadha*; its decisions regarding deference to administrative discretion such as *Chevron* and *Rust*; and its latest and otherwise curious attack on lower court use of legislative history and evidence of congressional intent for resolving statutory ambiguity in cases such as *Wisconsin* and *West Virginia University Hospitals*.

Here, then, we arrive at the assumptions made by conservative critics regarding the executive's obligation to enforce the policies enacted by Congress and why it is they argue courts should not compel agency compliance with statutory intent.

Separate Branches and the Politics of Statutory Obligation

For those familiar with the history of the American theory of separation of powers, it is an aphorism that the executive function is to enforce the will of the legislature within the bounds set by the Constitution.[63] So what justifies an executive branch that ignores congressional commands and a judiciary that would turn a blind eye to it? Several arguments have been advanced to support judicial aggrandizement of the executive at the expense of Congress. Three main strands of the argument, however, are distinguishable and merit response.

[61] 111 S.Ct. 1138 (1991).

[62] 111 S.Ct. 2476, 2490 (1991).

[63] The American theory of separation of powers is discussed in Malcolm Sharp, "The Classical American Doctrine of the Separation of Powers," *University of Chicago Law Review* 2 (1935): 385; W. B. Gwyn, *The Meaning of the Separation of Powers* (New Orleans: Tulane University Press, 1965).

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Statutes as the Product of Subcommittee Government

One line of argument assails Congress as an institution out of control. Reforms decentralizing power in Congress during the 1970s led to a form of "subcommittee government" where control over regulatory policy was stripped from Congress as an institution and captured by new "issue networks." These networks consist of liberal subcommittee chairs, overzealous congressional staff members, interest groups, and bureaucrats anxious to free themselves from White House control.[64] These subcommittees and their staff members drafted lengthy, complex legislation and committee reports that inaccurately reflected the overall goals and mood of Congress. As the quantity and complexity of legislation emerging from subcommittees increased, individual members of Congress became less committed to scrutinizing legislation and the accompanying reports.[65] As sweeping regulatory measures made their way through Congress, most members never understood what they voted on or were duped into believing the legislation was more innocuous than it was. Nevertheless, courts have eagerly used the language of these congressional statements to invalidate administrative action based on presidential policy. Thus, for instance, Shep Melnick has argued:

> When courts look to congressional intent to resolve ambiguity, they usually find the intent of the program advocates who dominate subcommittees. The real partners in the new administrative law, to put it bluntly, are the courts, subcommittees and those administrators who wish to be freed from the influence of OMB and the President.[66]

The argument that legislative histories and committee reports should be ignored by the courts has been taken up most forcefully by Justice Scalia who has argued: "most members of Congress do not have time to read committee reports . . . such documents thus become devices of committee-staff prescription, used by the staff who write them to

[64] See Hugh Heclo, "Issue Networks and the Executive Establishment" in Anthony King, ed., *The New American Political System* (Washington DC: American Enterprise Institute, 1979), 87; and Hugh Heclo, *A Government of Strangers: Executive Politics in Washington* (Washington, DC: Brookings, 1977); and Murray Weidenbaum, *Business, Government, and the Public* (Englewood Cliffs, NJ: Prentice-Hall, 1981).

[65] See Melnick, "The Politics of Partnership," 655–656.

[66] Ibid.

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construct legislative history. They are not legitimate expressions of the congressional will."[67]

Politics inside Congress, however, can hardly justify administrative efforts to circumvent its authority as an institution. Although one might accept that committees and subcommittees dominate the legislative process, it does not follow that Congress has lost control over the resulting policy. The fact that committee reports are written by staff members does no more to invalidate them as statements of congressional intent than the fact that court opinions are written by law clerks or that presidential orders are written by subordinate officials invalidates these. Congressional staff members are part of the institutional process and function pursuant to Congress's authority. Representative Robert Kastenmeier (D-WI) recently remarked: "Why [committee reports] should not be given credibility, and validity . . . I don't know. It probably is the only definitive explanation of the bill outside the language of the bill itself."[68]

Moreover, the description of an ignorant Congress blindly supporting subcommittee recommendations has been widely disputed.[69] Legislation and subcommittee reports have increased in length and complexity, but this does not mean that Congress is denied the ability to discern their consequences or meaning, or that individual members of Congress are easily duped. This description not only flies in the face of congressional norms of behavior, wherein members seek the trust of colleagues as a source of personal power. It also fails to account for the role of special interest groups that critics otherwise believe are ubiquitous on Capitol Hill. Special interest groups from both the political Left and Right read the details of subcommittee legislation and accompanying reports and are quick to alert congressional forces to policy implications. Although legislators are not able to read every detail of subcommittee recommendations, they do understand the policy embodied in them.

Justice Scalia is certainly correct if his argument is that committee reports and legislative history should not form the starting point for statutory interpretation. Judges should turn to evidence of congressional intent only when legitimate disagreement about the meaning of

[67] Scalia's remarks were reported by Robert Katzmann in Katzmann, *Judges and Legislators Toward Institutional Comity* (Washington, DC: Brookings, 1988), 172.

[68] Ibid., 173.

[69] See the debate between Scalia, Kastenmeier, Michael Remington, and Stephen Breyer in Katzmann, ed., *Toward Institutional Comity*, 170–175.

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statutory language exists. However, when disagreement or ambiguity is present, it would be a grave disservice to Congress to suggest that its efforts to give guidance on statutory meaning should not count. We may not like the process it utilizes to offer such guidance. That, however, is an argument about congressional reform, not about judicial standards of statutory interpretation. In his dissenting opinion in *West Virginia University Hospitals*, Justice Marshall warned of the institutional consequences of ignoring evidence of congressional intent. Marshall criticized the Court's emerging textualism in statutory review as the use of "the implements of literalism to wound, rather than to minister to, congressional intent. That is a dangerous usurpation of congressional power when any statute is involved."[70]

Statutory Uncertainty and Judicial Deference to the Executive

A second argument raised against statutory duty is that judges use a style of interpretation that ignores the pluralistic nature of legislation. Every statute embodies trade-offs and compromises between competing groups and congressional factions. This is especially true with respect to the sweeping regulatory legislation passed during the 1960s and early 1970s. Martin Shapiro, for instance, suggests that these statutes have at least three different levels of legislative instruction: preambles and general provisions that announce broad ambitious aspirations; a more detailed level of standards that often contain "agency forcing" and "technology forcing" provisions; and a final level of "fudge clauses" or escape provisions representing legislative concessions to regulated industry groups.[71] The different layers in regulatory statutes are often inconsistent. A broad public purpose goal announced at the first level may not be matched by the standards set at the second and may even be qualified by the fudge provisions at the third.[72]

When judges use statutory duty, they pick and choose the level of legislative commands they prefer.[73] According to Shapiro, the problem is made acute by acceptance of "post-pluralist" or "post-consequentialist" jurisprudence, wherein judges "favor public regarding or public interest interpretations over those that register the concrete claims of particular groups." Such an approach to statutory interpretation fails

[70] 111 S.Ct. 1138, 1148–49 (1991).
[71] Shapiro, *Who Guards the Guardians?* 81–87.
[72] Ibid., 88.
[73] See Scalia's remarks in Katzmann, *Toward Institutional Comity*, 172.

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to recognize the mosaic of legislative compromises. Consequently, when statutory intent is ambiguous, judicial insistence on the most "public regarding" interpretation equates to nothing more than judicial insistence on the judge's personal preferences.[74] Courts should instead defer to the agency's interpretation. What judges should ask when reviewing agency action is not whether the agency has adopted the "best interpretation" but only whether it has adopted a "reasonable interpretation."

This, however, is precisely the standard of review adopted by the Court in *Chevron* and *Vermont Yankee*. So why do critics remain dissatisfied? The answer is complicated but comes down to what is meant by reasonable. The most obvious response is that reasonable is anything not "arbitrary or capricious," which is the standard established by the APA. Previous judicial interpretations of this standard, however, found that to avoid being arbitrary and capricious, agencies must do more than avoid irrationality; they must make "reasoned decisions."

To ensure reasoned decisions, courts have required agencies to take a "hard look" at relevant facts and information.[75] And they have insisted that agencies compile reviewable decision making records demonstrating "dialogue" with interested parties and factual support for their decisions.[76] This type of review, allowing courts to pierce through the agency decision itself and examine the decision-making process, was implicitly accepted as part of the arbitrary and capricious standard by the Court in *Chevron* and *Vermont Yankee*.

Critics complain that under the guise of requiring reasoned decision making judges can force agencies to reach substantive policy outcomes. Congress, they argue, meant to limit judicial examination of agency reasoning under the APA. Shapiro, for instance, claims that the arbitrary and capricious standard was intended to be only a "lunacy test"—allowing judges to overturn agency decisions only when so obviously defective that only a lunatic could have reached them.[77] In other words, substantive agency decisions, not processes, should be the subject of review, and agency findings should always be deferred to unless they are so obviously irrational that they border on absurdity.

[74] Shapiro, *Who Guards the Guardians?* 121–127.

[75] The "hard look" doctrine was first announced in *Greater Boston Television Corp. v. FCC*, 444 F.2d 841 (D.C.Cir. 1969). See Cass Sunstein, "In Defense of the Hard Look: Judicial Activism and Administrative Law," *Harvard Journal of Legislation and Public Policy* 51 (1984): 7.

[76] See *Florida Power and Light Co. v. Lorian*, 105 S.Ct. 1598 (1985).

[77] Shapiro, *Who Guards the Guardians?*, 56.

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Such a standard, however, is not only imprudent, in effect allowing politically responsive administrators to ignore the technical advice of even their own agency experts; but it also inaccurately portrays what Congress intended when passing the APA. Although it is true that Congress saw the arbitrary and capricious standard as a restriction on judicial review, it must be understood in the context of what Congress hoped to accomplish by that restriction. The APA did not intend to abandon the administrative bureaucracy to unbridled political control. Rather, Congress at the time of APA's passage wanted a competent, neutral administrative bureaucracy that made decisions based on scientific facts and technical expertise.[78]

Against the backdrop of the New Deal clash with the Supreme Court and the close executive-congressional relationship that existed following the New Deal realignment, judges loomed as the greatest threat to a government of neutral competency. Congress assumed that executive branch agencies generally could be trusted to pursue, rather than obstruct, legislative purposes. Hence, congressional concern was not about judicial interventions per se, but about safeguarding government administration from the arbitrary and capricious influence of partisan whim and personal idiosyncrasy. Certainly, nothing in the legislative history of the APA or the arbitrary and capricious standard suggests Congress intended to allow administrators to disregard or violate congressional policy choices.

Moreover, it is unclear how prescriptions for broad deference under the APA could be squared with the judiciary's constitutional obligation to ensure executive compliance with law. What choice do judges have when confronted with agencies refusing to enforce clear standards required by unambiguous language in the first two levels of statutes? Judges presumably should defer to administrative agency decisions that ignore these first two levels of law and focus only on the third fudge factor level because the executive chooses to do so. But there is no a priori reason why the more public-regarding levels of statutory meaning should be negated to be faithful to the third private interest level.

[78] This is the traditional account of legislative intent behind the APA. See Walter Gellhorn, "The Administrative Procedure Act: The Beginnings," *Virginia Law Review* 72 (1986): 219. Shapiro recognizes that the APA and New Deal statutes attempted to make the bureaucracy "politically neutral" and "technologically expert" in Bryner and Thompson, eds., *Constitution and Regulation of Society*, 215–220. The work considered as the classic of the traditional administration orthodoxy is Luther Gulick and Lendall Urwick, eds., *Papers in the Science of Administration* (New York: Institute of Public Administration, 1937).

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Finally, debate about a precise definition of arbitrary and capricious under the APA misses the point. Even if we accept a narrow definition, is it reasonable to assume that an agency decision violating clear legislative instructions or disregarding relevant facts is not arbitrary or capricious? A lunacy test hurdle to judicial review of agency action would give politically appointed executives carte blanche to ignore Congress as well as administrative expertise in order to pursue partisan objectives. What critics appear to really object to is not the degree of judicial review, but the fact that any review takes place at all.[79]

The realistic premise of the analysis is now bare. Why should administrators not be held to the best interpretation of statute or the rule which best respects relevant facts? It is because there are no best or right answers. That is, there are no neutral principles of adjudication yielding a correct or best interpretation of statute. Nor are experts able to agree on scientifically neutral facts that in a similar vein would lead to right or best policy conclusions.[80]

Given the uncertainty of regulatory science and the political nature of law, the administrative process becomes merely a political game played by Congress and the president, which courts should stay out of. As Shapiro tells us: "Instead of asking the agencies to put their uncertainties on the table so everyone can see that they are really making a policy choice, courts [inappropriately] demand that agencies pretend their decisions are correct science rather than prudential guesses."[81]

The argument that regulatory law and policy science are fraught with uncertainty, and hence are essentially political, has both a strong and a weak claim. The strong claim is that all policy-related decisions are political and therefore unreviewable from the standpoint of neutral principles. Because the indiscriminate nature of this claim destroys any method of evaluating government performance, a second, more responsible claim is usually advanced. It suggests that neutral principles and facts are important, but only during the early stages of decision making, when narrowing down possible alternatives. After the narrowing process is complete, however, administrators are faced with multiple acceptable alternatives from which to choose. The choice at

[79] The one exception critics allow is that courts are expected to protect "traditional" property rights, though here it is unclear why these rights are superior to others that might claim judicial protection.

[80] See the discussion between Shapiro, Theodore Lowi, Aaron Wildavsky, and Sheldon Wolin in Bryner and Thompson, eds., *The Constitution and Regulation of Society*, 238–249.

[81] Ibid., 245.

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this final stage is political, but narrowing the alternatives may be done by appealing to apolitical criteria.

Obviously, assumptions about the relativity of regulatory science and statutory interpretation may not be shared. Even if we accept these assumptions in the weak form, however, they do not lead to the prescription of wholesale deference to administrative action. The judge still has the duty of ensuring that administrators properly limit policy options. When correctly understood, this is what is implied by judicial devices such as the "hard look" doctrine and the "dialogue requirement." The insistence on reasoned decision making clearly does not force administrators to one inevitable policy conclusion. Rather, as the Supreme Court's recent decisions recognize, more than one alternative usually exists. But administrators must be able to demonstrate that their choices can be supported on grounds other than mere partisanship.

Statutory Duty and the Separation of Powers

A final objection to judicial insistence on statutory duty is lodged not in the APA but in the separation of powers itself. Jeremy Rabkin, for instance, has argued that although courts have deferred to presidential power in constitutional disputes, they have "forgotten" the separation of powers doctrine in administrative law.[82] In these cases the Supreme Court has been "eager to make the federal courts into agents of Congress, holding executive operations to congressional intentions."[83] This not only violates the "inherent logic of the Constitution," but, he points out, "enforcing the will of Congress, of course, can often serve as an excuse for judges to enforce their own notions of good policy."[84] In cases like *Chevron*, *Bowsher*, and *Chadha* the Supreme Court does rebuke lower courts for intruding on the executive, but, Rabkin complains, it nevertheless "took for granted that judges must hold executive operations to those standards which they can discern as being intended by the enacting Congress."[85]

For those thinking this was the point of the separation of powers, Rabkin defends the argument in a curious way. He begins by asserting that because the Framers wanted to protect natural rights and opted

[82] Rabkin, *Judicial Compulsions*, 81.
[83] Ibid.
[84] Ibid.
[85] Ibid.

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for a system of institutional obstacles to constrain legislative majorities, they intended to restrict the exercise of popular sovereignty.[86] By equating popular sovereignty with legislative power, he then argues that the Framers also intended to limit congressional authority. The Framers were not troubled by constraints on the legislature, "but instead argued quite explicitly that the will of the impulsive or selfish majorities ought to be obstructed in order to safeguard private rights and the public good."[87] An executive that would be free to pursue the "public good," Rabkin insists, is what the Framers intended when they envisioned the need for energy in the executive and opted for a separation of powers. To force executive compliance with congressional enactments when such may be contrary to the public good would foster administrative inertia and would rob the executive of the energy it was intended to have.[88]

This argument is unpersuasive for several reasons. First, it ignores the Lockean assumptions that form the foundations of American constitutionalism and the theory of separation of powers. John Locke's belief that sovereignty derived from natural law rights held by individuals is what allowed the Framers to assert such rights as trumps against positivist legislation. But within these natural rights constraints, positive law, Locke argued, was strictly the province of the legislature.[89] When properly understood, the relationship between popular sovereignty and legislative sovereignty is quite clear. Popular sovereignty was embedded at the constitutional level. Natural rights restraints on legislative actions are implicit; hence the rights defined in the Constitution. The executive is not bound to follow positivist legislation violating those rights, not because the Framers opted to limit popular sovereignty but because the Lockean theory of popular sovereignty implied natural rights limitations.[90]

[86] Ibid., 82.

[87] Ibid., 82.

[88] Ibid., 83–102.

[89] Locke goes to great pains throughout his *Second Treatise* to stress that the legislature must dominate the other branches of government: "there can be but one supreme power, which is the legislative, to which all the rest are and must be subordinate" (chap. 13, para. 149). His much-quoted remarks about the separation of powers make clear why he believed in a strict separation of the legislative power from the executive: It may be, he said, "too great temptation to human frailty, apt to grasp at power, for the same persons who have the power of making laws to have also in their hands the power to execute them, whereby they may exempt themselves from obedience to the laws they make" (chap. 22, para. 143). John Locke, *Two Treatises of Government*, Peter Laslett, ed., (Cambridge, England: Cambridge University Press, 1960).

[90] Ibid., chap. 13, para. 149.

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In cases regarding the public good, where constitutional rights are not involved, Locke and the Constitution are both clear: The legislature is sovereign in such matters. Any serious attention to history would reveal that the theory of separation of powers, whether in its Lockean or latter formulation derived from Montesquieu, was intended to bind executive ministers to the law, to ensure a government of law and not of men.[91] The American addition of checks and balances extended additional institutional safeguards to the lawmaking process by sharing small portions of the legislative function with the executive, but this mixture of power is explicitly limited to the veto power.[92] To argue that the checks and balances legitimize executive noncompliance with statutes, based solely on policy disagreement, turns the entire theory of separation of powers on its head. More importantly, if judicial analysis of the separation of powers focused more heavily on the mixture, rather than the separation, of governmental function under the Constitution, the result would be a reduction, not an expansion of presidential authority to control the administrative state. Such a focus would further undermine the Court's formalistic, unitary-branch mode of analysis and permit a far greater role for Congress in oversight and direction of the bureaucracy.[93]

The president's control over administrative discretion ultimately hinges on the "faithful execution" clause.[94] Even if we admit to the broadest possible interpretation of this clause, it is the law in the end that is to be enforced. Certainly no legitimate view of discretion permits the negation of clear legislative intent, whether the president thinks it prudent or not.

Why We Should Reject a Liberated Executive

The problem for those who would liberate the executive from judicial insistence on the enforcement of statutory intent is that their argument ultimately is the assertion of an executive "dispensing power" of the

[91] The best discussion of the classical theory of separation of powers is found in M. J. C. Vile, *Constitutionalism and the Separation of Powers* (Oxford, England: Blackwell, 1967). A more abbreviated discussion is found in Geoffrey Marshall, *Constitutional Theory* (Oxford, England: Clarendon Press, 1971), 97–124.

[92] Ibid. See also the discussion in Malcolm Sharp, "The Classical American Doctrine of Separation of Powers," *University of Chicago Law Review* 2 (1935): 385.

[93] See Peter L. Strauss, "The Place of Agencies in Government: Separation of Powers and the Fourth Branch," *Columbia Law Review* 84 (April 1984): 579.

[94] U.S. Constitution, art. II, sec. 3.

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kind the Constitution clearly rejects. The language of the faithful execution clause undoubtedly came from the first article of the English Bill of Rights, which declares: "That the pretended power of suspending of Laws, or the Execution of Laws by Regal Authority, without Consent of Parliament is Illegal." This wording was a response to the seventeenth-century dispute between Parliament and the Stuarts over the so-called dispensing power to void laws meeting the king's displeasure. The history of this dispute was well known to the Framers, and it is clear they intended to deny the executive any discretionary authority of the type claimed by the Stuarts.[95]

That the Constitution denied the president a dispensing power was recognized by the Supreme Court as early as 1838 in the case *Kendall v. United States*. In *Kendall* the Court said: "To contend that the obligation imposed on the President to see the laws faithfully executed, implied a power to forbid their execution, is a novel construction of the constitution, and entirely inadmissible."[96] This decision echoed an even earlier ruling in *United States v. Smith and Ogden*, wherein the federal district court in New York said flatly:

> The President of the United States cannot control [a] statute, nor dispense with its execution, and still less can he authorize a person to do what the law forbids. If he could, it would render the execution of the laws dependent on his will and pleasure; which is a doctrine that has not been set up, and will not meet with any supporters in our government.[97]

These early judicial interpretations of the faithful execution clause were based on the English history of the clause itself. Michael Davidson, legal counsel for the U.S. Senate, has pointed out that in *Smith and Ogden* and *Kendall* the "courts drew a direct line from the powers denied to the English Crown, through the Constitution, to a permanent restriction on the President that he could not impair the continuing operation of statute."[98]

Prior to the 1980s, the absence of executive authority to unilaterally dispense with the law was consistently recognized, even by the executive

[95] See Robert Reinstein, "An Early View of Executive Powers and Privilege: Trial of Smith and Ogden," *Hastings Constitutional Law Quarterly* 2 (Spring 1975): 309.

[96] 37 U.S. (12 Pet.) 524, 612 (1838).

[97] 27 Fed. Cas. 1192, 1230 (C.C.D.N.Y., 1806).

[98] See Michael Davidson, "Authority of the Justice Department to Deny the Validity of Acts of Congress," United States Senate, Committee on the Judiciary, *Hearings on Department of Justice Authorization and Oversight, 1981*, 96th Congress, 2d sess. (1981), 883, 892.

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branch itself. In 1980 Attorney General Benjamin Civiletti, relying on a long history of opinions by attorneys general on the subject, stated categorically:

> The President has no "dispensing power." If he or his subordinates, acting at his direction, defy an Act of Congress, their action will be condemned if the Act is ultimately upheld. Their own views regarding the legality or desirability of the statute do not suspend its operation and do not immunize their conduct from judicial control.[99]

But, if courts must always hold the executive to compliance with the law, what if the statute is unreasonable, unrealistic in its premises, or simply bad public policy? For instance what should courts do when Congress mandates technology that is not yet available or regulatory goals that are simply unachievable? Would it not constitute a "perverse sort of legalism," critics have insisted, if judges required statutes to be fully enforced or statutory criteria fully observed in cases where standards are unobtainable or undesirable?[100]

The obvious response to these questions is to ask whose definition of public benefits or reasonableness should count? Implicit is the assumption that is disputed: the executive acts reasonably and on behalf of the public good; Congress and judges do not.[101] This may in fact be the case, but it is still unclear how prescriptions for judicial deference to the executive would help. If we leave this argument aside, however, there is a point here, though it is much more limited than arguments about popular sovereignty. When Congress passes laws forcing technology or mandating aspirational standards, the executive enjoys greater freedom from judicial demands that it comply with the law. If the technology or resources to reach statutory standards simply do not exist, judicial insistence to the contrary would be *lex ad absurdum*. Still, this is quite different from saying the executive is released from statutory obligation altogether. The fact that aspirational statutes cannot be perfectly complied with no more removes executive obligations than the fact that perfect justice is unobtainable diminishes obligations to pursue it.

[99] See letter from Benjamin Civiletti to Senator Max Bacus, 30 July 1980, reprinted in *Justice Department Authorization Hearings 1981*, 871, 876.

[100] Rabkin, *Judicial Compulsions*, 90–91.

[101] See Arthur Maass, *Congress and the Common Good* (New York: Basic, 1983); and William West and Joseph Cooper, "The Congressional Veto and Administrative Rulemaking," *Political Science Quarterly* 98 (1983): 201.

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Conclusion

The trend toward congressional micromanagement of policy and the creation of alternative enforcement regimes during the 1980s was a cause for concern, but not for the reasons conservatives suggested. It is not that these developments were antidemocratic; rather, the concern should have focused on why Congress lacked confidence in the executive's good faith efforts to enforce the law. The debate must reach deeper than merely criticizing Congress for micromanagement or the courts for fettering administration. It must ask why there was a crisis in confidence in the executive and how courts can best ensure democratic control over policy.

The judiciary's role in the disputes between Congress and the president in the administrative arena has largely been a passive one. The Supreme Court's most recent decisions in administrative law, however, should cause great concern for those committed to the rule of law. Administrative efforts to ignore statutory intent by invoking the executive's otherwise broad discretion to enforce the law are repugnant to the Constitution's vesting of legislative authority in Congress. This is true whether the White House is occupied by a Republican or, as is the case today, a Democrat. Whatever one believes is prudent policy, the Constitution does not permit the executive to pursue policies that are contrary to those that are express or implicit in statute, and judges should require nothing less from executive branch agencies.

Ultimately the question of judicial oversight of the administrative state must raise larger institutional questions. Judges can justify interference with administrative decision making only if they point to rights that are in jeopardy or violations of statutory duty. In the case of the former, we are fortunate if we have an active judiciary. But in the case of the latter, the role of the judiciary is largely determined by the degree of cooperation existing between the two elected branches. It is with this in mind that the institutional consequences of electoral dealignment, divided government, and the administrative presidency strategy should be considered.

The English example is instructive on this point. The fusion of executive and legislative authority in England largely removes the basis for independent judicial excursions into the administrative process. Patrick Atiyah, comparing English and American judges, recently echoed this point: "What is quite clear is that the entire constitutional-political role of the legislature and the executive determines the role of judges

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and the courts."[102] Although our constitutional system does not permit the same degree of cooperation between branches, comity and cooperation can exist. If the goal is to reduce judicial intervention into the administrative process then those advising presidents should seek new ways for cooperation instead of confrontation with the Congress.

Some will object that this is an unrealistic prescription. So long as our electoral system produces institutional irrationality, prescriptions for institutional cooperation languish. Partisan disagreement over social and economic regulation animated much of the conflict between the Reagan and Bush administrations and Congress during the 1980s. Conflict will no doubt continue between the Clinton administration and a Republican Congress during the 1990s. However, analysis that focuses exclusively on partisan objectives in administrative law fails to take seriously the importance of institutions for the long-term health of democracy. Whatever short-term policy objectives may be gained by strategies that shift policy disputes into the bureaucracy, we can no longer afford to ignore the toll they exact in public confidence in our democratic institutions.

Conservative critics of judicial developments in administrative law were not entirely wrong; courts have become more prominent actors in the administrative process. But their critique was incomplete. Their most important deficiency was not the mischaracterization of judicial action, but their failure to take account of the impact of new presidential strategies of policy making. Why have courts become the fulcrum for administrative conflict? Why has Congress turned to micromanagement techniques? The answer should focus on why and how recent presidents have turned to administrative rather than legislative strategies of policy making.

Contrary to what the critics of the judiciary suggested, holding the executive branch responsible to the law does not rob the presidency of the energy that the Framers intended or that contemporary circumstances require. In a system which vests legislative authority in Congress (like it or not), any model of strong presidential leadership cannot afford to set itself up as a competitor with Congress. It is not necessary to emasculate the presidency in order to recognize that the Constitution requires Congress to be an active partner in administrative policy making.

[102] See Patrick Atiyah, "Judicial-Legislative Relations in England" in Katzmann, ed., *Toward Institutional Comity*, 135.

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The Legislative Veto and the Limits of Public Choice Analysis

JESSICA KORN

Contemporary public choice theorists have become among the most prolific scholars of public law.[1] Those at the forefront of this recent development claim that "non-normative, rational-choice theories of political institutions" are "capable of delivering novel insights about significant legal issues."[2] In particular, scholars have used these theories to give guidance to judges engaged in separation of powers jurisprudence, as well as to journalists and political scientists engaged in analyzing the workings of American political institutions. Public choice theorists have gone so far as to contend that Justice Byron White's dissent in *INS v. Chadha*, the landmark case in which the Supreme Court struck down the legislative veto as unconstitutional, reflects a better understanding of constitutional structure than the

[1] See analyses and reviews of this growing field in Daniel Farber and Philip Frickey, "Foreword: Positive Political Theory in the Nineties," Positive Political Theory and Public Law Symposium, *Georgetown Law Journal* 80 (February 1992); Kenneth Shepsle, "Congress Is A 'They,' Not An 'It': Legislative Intent As Oxymoron," *International Review of Law and Economics* 12 (June 1992); and Robert Katzmann, "Bridging the Statutory Gulf Between Courts and Congress: A Challenge for Positive Political Theory," *Georgetown Law Journal* 80 (February 1992).

[2] Farber and Frickey, "Forward," 462, 471.

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majority opinion in the decision.[3] Not everyone agrees. Some scholars have criticized these theorists for imperfectly applying public choice models to the legislative veto issue.[4] But a simple empirical analysis of the claims made by Justice White reveals more fundamental problems with public choice theories meant to illuminate the workings of the constitutional separation of powers.

My analysis proceeds in three sections. First, I place White's dissent in the context of separation of powers jurisprudence. I also explain how doctrinal debates within this body of law helped define the legislative veto controversy. In the second and third sections, I test Justice White's assertions that the legislative veto was an indispensable tool of congressional policy making against facts about the actual workings of the mechanism. Section II describes how White overlooked the extensive oversight powers, all perfectly constitutional, possessed by Congress. Section III shows that he gravely exaggerated the legislative veto's practical, political significance. The article concludes by warning public choice theorists away from the mistaken understanding of the separation of powers system underlying White's inaccurate assertions.

Separation of Powers Jurisprudence and the Legislative Veto

The legislative veto, invented by members of Congress in the 1930s, was a procedure meant to increase congressional oversight of administration by reducing the formal separation between legislative and administrative processes. It authorized members to shortcut constitutionally-mandated procedures for legislative action, which require any such action to be approved by both chambers of Congress and presented to the president. With legislative veto authority, members could formally reject policies proposed by executive branch or independent agency officials simply by passing a resolution through either chamber. The majority in *Chadha* invalidated the legislative veto based on a straightforward reading of the constitutional requirements for legislative action. The legislative veto was unconstitutional, the majority reasoned, because it allowed members of Congress to bypass the bicameralism and presentment clauses of Article I of the Constitution.[5]

[3] William N. Eskridge Jr. and John Ferejohn, "The Article I, Section 7 Game," *Georgetown Law Journal* 80 (February 1992).

[4] See Peter Strauss and Andrew Rutten, "The Game of Politics and Law: A Response to Eskridge and Ferejohn," *Journal of Law Economics and Organization* 8 (March 1992).

[5] The bicameralism requirement springs from Article I §1 of the Constitution which vests "all legislative Powers in a Congress of the United States, which shall consist of a Senate and House

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But to White, the legislative veto was a welcome example of constitutional evolution. The extraordinary twentieth-century growth in "the complexity and size of the Federal Government's responsibilities" had made the legislative veto, in White's mind, "the most effective if not the only means to insure [Congress's] role as the nation's lawmaker."[6] White objected to the majority opinion because it invalidated the legislative veto even though the mechanism was an "important, if not indispensable political invention."[7] Public choice theorists have applauded White's dissent because their analyses of interbranch relations have led them to similar conclusions. They conclude that the Court's invalidation of the mechanism was illogical and "ahistorical, given the vast changes in United States government in the modern administrative state."[8]

In supporting White's dissent, public choice theorists assert a preference for functionalist reasoning, in contrast to the majority's formalist opinion. Formalists argue that separation of powers disputes between the executive and legislative branches "should be governed by close attention to the text, structure and history of the Constitution."[9] *Chadha* is categorized as a formalist decision because it dismissed arguments that "administrative government would work more efficiently if [Congress's] legislative veto power were recognized." In striking down the legislative veto by citing constitutionally mandated limits on legislative power, the Court simply stated that "it is crystal clear . . . that the Framers ranked other values higher than efficiency."[10]

Functionalists object to this willingness to "sacrifice . . . the goal of a workable government in favor of a strict and formalistic interpretation of separation of powers."[11] The focus of their approach is on "the need for flexibility in separation of powers doctrine and the declaration that courts should not reach out unnecessarily to decide separation

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of Representatives." The presentment clause, Article I, §7, cl.2, states that "Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States." This requirement applies to "Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary" as well as to bills. (Article I, §7, cl.3.)

[6] *INS v. Chadha* 103 S.Ct. 2764.

[7] Ibid., 2795.

[8] Eskridge and Ferejohn,"The Article I, Section 7 Game," 527.

[9] Stephen Carter, "Constitutional Improprieties: Reflections on *Mistretta*, *Morrison*, and Administrative Government," *The University of Chicago Law Review* 57 (Spring 1990): 361.

[10] Ibid., 360.

[11] Dean Alfange, Jr., "The Supreme Court and the Separation of Powers: A Welcome Return to Normalcy?" *The George Washington Law Review* 58 (April 1990): 670.

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of powers issues."[12] *Chadha* is a perfect example of the sort of decision that functionalists find objectionable, because "its holding that the veto is unconstitutional [did] not turn upon any fact concerning the veto's origin, its purposes, or its balance of power effects. Rather, the decision [was] based upon the language of the Constitution, upon its structural dictates, not upon the function of the veto."[13]

Justice White's functionalist dissent resonated with the beliefs of many political scientists, legal scholars, and journalists for two related reasons. First, these analysts had long viewed the legislative veto as a necessary shortcut through some of the constitutional procedures upholding the separation of executive and legislative power. They viewed it as a valuable antidote to weaknesses in the political system that they attributed to the constitutional structure. Though critiques of the separation of powers take a wide variety of forms, they all agree that the tripartite system is to blame for making Congress incapable of properly overseeing administration.[14] Consequently, many analysts viewed the legislative veto as "one of the most significant institutional developments in 20th century American politics," because it endowed Congress with extraconstitutional controls over delegated authorities.[15] The widely accepted critiques of the separation of powers, therefore, ensured a friendly audience for White's indignance at the majority's invalidation of the legislative veto.

White's worries seemed especially well founded, secondly, because analysts of divided government expected *Chadha* to aggravate the weaknesses of the separation of powers system. The Court's decision, which came during the first Reagan administration, promised to further weaken Congress's capacity to oversee administration. Over a decade's worth

[12] Ibid., 672.

[13] Stephen Breyer, "The Legislative Veto After *Chadha*," *Georgetown Law Journal* 72 (February 1984): 790.

[14] One strand of critiques blames the separation of powers for allowing Congress to make open-ended delegations of powers to executive branch and independent agencies, thereby violating democratic principles by leaving unchecked powers in the hands of unelected bureaucrats. For the landmark presentation of this critique, see Theodore Lowi, *The End of Liberalism*, 2nd ed. (New York: Norton, 1979). Another strand criticizes the tripartite system for hindering the capacity for policy leadership in American government. To remedy the problem, it recommends either subsuming administrative responsibilities under legislative control by amending the American system into a British-style parliamentary system or further freeing administration from legislative control by subjecting Congress to executive branch dominance. See, most importantly, Woodrow Wilson, *Congressional Government* (Gloucester, MA: Peter Smith, 1973, reprint of original, 1888); Woodrow Wilson, *Constitutional Government in the United States* (New York: Columbia, 1961, reprint of original, 1908).

[15] Joseph Cooper, "The Legislative Veto in the 1980s" in Lawrence Dodd and Bruce Oppenheimer, eds., *Congress Reconsidered*, 3rd ed. (Washington DC: Congressional Quarterly Press, 1985), 364.

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of divided government—in which Republicans controlled the White House and Democrats controlled Congress—had helped turn the legislative veto into a popular political football. As a mechanism believed to increase congressional control over policy outcomes, it was expected to hinder the implementation of Republican policy views.[16] Reagan administration officials, therefore, cheered the Court's invalidation of the legislative veto. But analysts who believed that constitutional structure already imposed too many limits on legislative power criticized the Court for a Republican bias that made Congress "the one branch of the Federal Government that most often ends up," in separation of powers cases, "on the short end of the stick."[17]

Even the majority opinion in *Chadha* agreed with White's view that the legislative veto was a functional solution to governmental needs. The majority did not question White's claim that the veto was an "indispensable political invention" or that "it has become a central means by which Congress secures the accountability of executive and independent agencies."[18] Quite to the contrary, it stated rather bluntly that "we need not challenge" White's claim. Depending on a simplistic understanding of separation of powers doctrine, the majority accepted White's "utilitarian argument."[19] The majority asserted that "the fact that a given law or procedure is efficient, convenient, and useful in facilitating functions of government . . . will not save it if it is contrary to the Constitution."[20]

The seemingly great scope of the Court's decision added even more grist to White's mill. Rather than restrict its analysis to the particular legislative veto provision at issue in the Immigration and Nationality Act, *Chadha* held that any provision violating bicameralism and presentment was unconstitutional. "The breadth of this holding," Justice Lewis Powell noted at the time, "gives one pause."[21] "Today's deci-

[16] See L. Gordon Crovitz and Jeremy Rabkin, eds., *The Fettered Presidency* (Washington, DC: AEI, 1989); Gordon Jones and John Marini, *The Imperial Congress* (New York: Pharos Books, 1988).

[17] "Amendments to the Metropolitan Washington Airports Authority Act of 1986," Hearing Before the Subcommittee on Aviation, House Public Works Committee, 102nd Cong, 1st sess., 26 September 1991, statement of Johnny Killian, 148; see also Benjamin Ginsberg and Martin Shefter, *Politics By Other Means* (New York: Basic Books, 1990), 155, who see this strand of separation of powers cases as "portend[ing] the judiciary's emergence as a conservative bastion in alliance with the presidency."

[18] 103 S.Ct. 2764, 2792.

[19] Ibid., 2782.

[20] Ibid., 2781–2.

[21] Ibid., 2764, 2788.

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sion," White exclaimed, "strikes down in one fell swoop provisions in more laws enacted by Congress than the Court has cumulatively invalidated in its history."[22] Some members of Congress reacted by describing *Chadha* as a "statute-shattering"[23] decision that promised to "affect our government as few decisions have or ever will."[24] One political scientist went so far as to claim that the loss of the legislative veto had helped make the Reagan administration successful at dominating Congress. In contrast to Jimmy Carter, who had operated "in an era of congressional ascendancy," Reagan faced "an entirely different climate" that was partly due to the fact that "within two years of his election, the Supreme Court had declared the legislative veto unconstitutional. . . ."[25] Many analysts applauded White's dissent because they saw *Chadha* as producing an unwarranted imbalance in the relationship between the political branches.[26]

The public choice preference for White's understanding of the constitutional system is consistent with much of the conventional wisdom on *Chadha* and the legislative veto. But exploring the decision's actual impact on the balance of policy-making power between the branches points to two mistaken assumptions that plague White's analysis. The more obvious of these two problems grows out of his exaggeration of the actual scope of the decision. Because he overlooked the breadth and flexibility of the oversight powers possessed by Congress, he assumed that *Chadha* was broad enough to taint all of the congressional control procedures that had accumulated under the "legislative veto" banner over the years.

Though White calls for a functional analysis of the constitutional invention under investigation, he fails to question whether the mechanism ever played a significant role in affecting policy outcomes. Had White engaged in a truly functional analysis, exploring the politics surrounding the implemention of statutes containing veto provisions, he would have discovered that those legislative vetoes that were in fact

[22] Ibid., 2811.

[23] "Legislative Veto After *Chadha*," Hearings Before the Committee on Rules, House of Representatives, 98th Congress, 2nd sess., 9, 10 November 1983, 23, 29 February 1984, 1, 21, 22 March 1984, 10 May 1984, 28, statement of Senator Carl Levin, D-MI.

[24] Elliott Levitas and Stanley Brand, "The Post Legislative Veto Response: A Call to Congressional Arms," *Hofstra Law Review* 12 (Spring 1984): 616.

[25] Paul Light, "The Focusing Skill and Presidential Influence in Congress" in Christopher Deering, ed., *Congressional Politics* (Homewood, IL: Dorsey Press, 1989), 254.

[26] See Louis Fisher, "Judicial Misjudgments About the Lawmaking Process: The Legislative Veto Case," *Public Administration Review* 45 (November 1985).

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struck down by *Chadha* were not as essential in enhancing members' capacities to control policy making as the rhetoric surrounding them led him to believe. He also would have been able to do what the majority opinion failed to do: bring into question the faulty assumption that the American separation of powers system is incompatible with good administration.

Misreading the Scope of the Decision

Legislative vetoes were deemed unconstitutional by the Supreme Court because they formally empowered Congress to bypass the bicameralism and presentment requirements. Most debates about the importance and functions of the legislative veto, however, included mechanisms that did not violate these procedures. Almost all descriptions, tabulations, and discussions of the legislative veto throughout the 1970s and early 1980s included perfectly constitutional reporting requirements, though these simply postponed executive actions from taking effect.[27] With such a broad definition of legislative veto, it was perhaps to be expected that many analysts of American politics would mistakenly interpret *Chadha* to portend great functional problems.

The Supreme Court aggravated these worries by asserting without much explanation that Congress cannot act outside constitutionally prescribed legislative procedures.[28] By avoiding any discussion of the functions and objectives that the legislative veto was supposed to achieve, the majority decision in *Chadha* left open the possibility that congressional control itself was constitutionally suspect.[29] Chief Justice Warren Burger's "wooden, . . . rigid and mechanical"[30] reasoning did not make clear whether the Court was "merely disapproving of the manner in which Congress chose to" achieve the ends the legislative veto was

[27] See Arthur Miller and George Knapp, "The Congressional Veto: Preserving the Constitutional Framework," *Indiana Law Journal* 52 (Spring 1977): 371; and lists of legislative veto provisions prepared by the Congressional Research Service (CRS) reprinted in "Congressional Review of Agency Rulemaking," Hearings Before the Committee on Rules, House of Representatives, 97th Congress, 1st sess., October 1981; see also, summary of legislative veto lists prepared in the 1970s by CRS and by political scientists in Barbara Craig, *The Legislative Veto* (Boulder, CO: Westview Press, 1983).

[28] E. Donald Elliott, "*INS v. Chadha*: The Administrative Constitution, The Constitution and the Legislative Veto," *The Supreme Court Review: 1983* (Chicago: University of Chicago Press, 1984), 147.

[29] Girardeau Spann, "Spinning the Legislative Veto," *Georgetown Law Journal* 72 (February 1984): 815; Breyer, "The Legislative Veto after Chadha," 792.

[30] Elliott, "*INS v. Chadha*, 147.

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supposed to achieve, or whether it was "invalidating" the ends themselves.[31] Consequently, many analysts believed that *Chadha* would deal a great, generic slap at congressional oversight power. But this view rested on a misreading of the scope of constitutionally-imposed requirements on legislative power.

Among those who mistakenly allowed the term legislative veto to include all kinds of activities that neither violated the bicameralism nor presentment clauses was Representative Claude Pepper (D–FL). He worried that the Court's invalidation of the legislative veto prohibited Congress from engaging in legislative oversight. To assuage this worry, he called upon his colleagues in Congress to continue enacting veto provisions into law so that the Court would be forced to deal with "case after case" of challenges to the majority opinion in *Chadha*.[32] But his colleagues viewed such a strategy as unnecessary. They understood that the Court's invalidation of the legislative veto was unlikely to influence the informal relationships between the branches that characterize the process of everyday governing. In direct response to Pepper's worries, Representative Clarence Long (D–MD) noted that congressional instruments for overseeing the activities of administrative agencies, consisting mainly of informal interbranch contacts, had "not really been affected at all" by the Court's insistance on upholding the bicameralism and presentment clauses.[33]

Had Representative Pepper and Justice White paid more careful attention to the constitutional procedures at issue in the Court's invalidation of the legislative veto, they would not have been as concerned about protecting congressional prerogative. In defining the constitutional infirmities with the legislative veto, the Court distinguished it from "report-and-wait" provisions. Report-and-wait simply requires that administrative agencies report proposed actions to Congress before implementing them. Such provisions provide Congress with the opportunity to analyze proposed executive action and to badger an agency with extensive questions or threats if the proposed action is somehow unsatisfactory. But they do not allow Congress to overturn that proposed action, or threaten to overturn it, by a process that shortcuts the full legislative process. The Court asserted that report-and-wait is constitutional because it does not provide members with

[31] Spann, "Spinning the Legislative Veto," 815.

[32] "Legislative Veto After *Chadha*," Hearings Before the Committee on Rules, House of Representatives, November 1983, February, March, and May 1984, statement of Representative Pepper, 17.

[33] "Legislative Veto After *Chadha*," statement of Representative Clarence Long, 20.

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the formal authority to unilaterally veto any set of proposed actions. "Rather, it [gives] Congress the opportunity to review the Rules before they [become] effective and to pass legislation barring their effectiveness if the Rules [are] found objectionable."[34]

The Court's distinction between report-and-wait provisions and legislative vetoes means that congressional oversight mechanisms are legitimate as long as they rely solely on informal political pressures or a threat to reengage the full legislative process. In practice, members' ability to exercise informal pressures on administrators, often forcing administrators to retract unsatisfactory policy proposals, might very well amount to legislative veto authority. But report-and-waits raise no separation of powers problems because they assert no power to shortcut the legislative process.[35] Congressional oversight through such informal procedures might create other types of problems—undue delay in the implementation of rules, perhaps, or other negative consequences of micromanagement generally. Since such problems occur within the framework of the separation of powers, however, appealing to the constitutionally mandated procedures for legislative action can do little to affect them.

Those who hoped that upholding separation of powers procedures would undermine congressional power challenged the *Chadha* Court's distinction between informal, legislative veto-like mechanisms, and compulsory legislative vetoes. These critics of congressional power argued that informal oversight mechanisms were just as unconstitutional as legislative vetoes, because both allowed members to affect policy outcomes without fulfilling all of the requirements of the legislative process.[36] The Court considered and rejected this claim in a set of cases involving a report-and-wait provision governing activities of the General Services Administration (GSA). These cases were brought to court soon after *Chadha* declared the legislative veto unconstitutional. On first hearing, the Virginia Court of Claims struck down the report-and-wait provision as a violation of the separation of powers. It

[34] 103 S.Ct. 2764, 2776, fn. 9.

[35] Mort Rosenberg and Jack Maskell, "Congressional Intervention in the Administrative Process: Legal and Ethical Considerations," *CRS Report for Congress* #90-440, 7 September 1990, 31; Raymond Celada, "Constitutionality of Providing a Statutory Basis for General Accounting Office Bid Protest System," *CRS Report to Congress*, published in *Congressional Record* 3 October 1985, S 12526.

[36] Rosenberg and Maskell, "Congressional Intervention in the Administrative Process," 30; Brett Kappel, "Judicial Restrictions on Improper Congressional Influence in Administrative Decisionmaking: A Defense of the *Pillsbury* Doctrine," *Journal of Law and Politics* 6 (Fall 1989): 137.

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found that while the provision in the statute "may be facially inoffensive," it was evident, from "congressional and agency practice" that the provision was operating as "a *de facto* congressional veto. . . ."[37]

On appeal, however, the distinction between formal and informal legislative vetoes was upheld. The Appeals Court fully recognized that report-and-wait provisions often operate exactly as legislative vetoes, noting that:

> Committee chairmen and members naturally develop interest and expertise in the subjects entrusted to their continuing surveillance. Officials in the Executive Branch have to take these committees into account and keep them informed, respond to their inquiries, and it may be, flatter and please them when necessary.

Nonetheless, the court concluded, "there is nothing unconstitutional about this: indeed, our separation of powers makes such informal cooperation much more necessary than it would be in a pure system of parliamentary government."[38] From this point of view, clearly, it is wrong to presume that upholding constitutional procedures will necessarily undermine Congress's role in the policy-making process. Justice White would have avoided this faulty presumption if he had payed closer attention to the distinction between informal congressional control tools and legislative veto provisions meant to bypass the bicameralism and presentment requirements.[39]

Executive branch officials who shared White's misguided expectations learned the errors of their ways through political experience. It quickly taught them not to expect the Court's enforcement of separation of powers procedures to provide them with new freedoms from congressional control. They learned this lesson well in the controversy over the legal status of the committee reports that usually accompany appropriations bills. These reports, which often contain specific directives on how an agency should spend money, do not have the status of law because they are not subject to approval by both chambers or

[37] *City of Alexandria v. United States*, 3 Cl.Ct. 667 (1983), 683.

[38] *City of Alexandria v. United States*, 737 F.2d 1022 (1984), 1026.

[39] Some of the recent public choice scholarship on congressional oversight has begun to incorporate this narrower reading of the scope of *Chadha* in the building of formal models. See Elizabeth Martin, "Fast Track and Free Trade: Why Does Congress Delegate?" (presented at the annual meeting of the Midwest Political Science Association, Chicago, April 1992). But many recent studies of congressional oversight continue to describe "legislative-veto"-like activities as proof of Congress's noncompliance with *Chadha*. See, for example, William Gormley, *Taming the Bureaucracy* (Princeton, NJ: Princeton University Press, 1989); and James Bowers, *Regulating the Regulators: An Introduction to the Legislative Oversight of Administrative Rulemaking* (New York: Praeger, 1990).

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to presidential veto. Jim Miller, director of the Office of Management and Budget (OMB) in the Reagan administration, attempted to curtail the congressional practice of using committee reports to "earmark" money for particular projects by appealing to the reasoning used by the Court in invalidating the legislative veto. Appropriations committee reports are "neither voted on by Congress nor presented to the President, so they are not law," Miller declared in a letter sent to all federal agency heads.[40] Consequently, he announced that executive branch agencies would no longer follow the directives in committee reports.

In response to Miller's declaration, members threatened to tie the administration's hands with even stricter, legally binding restrictions on spending decisions.[41] Soon thereafter, Miller sent a second letter to all federal agency heads reversing his original statement. Though Miller was on solid legal ground in pointing out that report language is not legally binding, he was politically inastute to believe that he could appeal to separation of powers procedures to preclude members from using informal controls. In conceding defeat, Miller concluded that "I believe the congressional leadership is now fully aware of the principle involved." "We have made our point," his press secretary added. "We wanted to call attention to Congress and the public that report language was not legally binding."[42] This principle was not a great revelation to members of Congress. Nor did it strike them as having much political consequence.

But most executive branch officials did not need an embarrassing lesson in congressional power to realize that *Chadha* was of little practical value. This is evident from analyzing the White House strategy for responding to the loss of the legislative veto. This strategy consisted essentially of dampening enthusiasm among executive branch officials. White House officials in the Reagan administration knew that there were no gains to be won from *Chadha*, because they were well aware that Congress's power to exercise control over administration did not depend on shortcuts through constitutional procedure.

The administration also knew that influential committee chairs and party leaders had always opposed, albeit quietly, the enactment of legislative vetoes. Consequently, it expected them to be sympathetic

[40] "War Declared Over Report Language Issue," *Congressional Quarterly Weekly Report*, 25 June 1988, 1752.

[41] "OMB's Miller Backs Away From Report Language Battle," *Congressional Quarterly Weekly Report*, 9 July 1988, 1928.

[42] Ibid.

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to its objective of diffusing the interbranch power struggle surrounding the legislative veto issue. The administration called private meetings with powerful committee chairs and congressional party leaders to assure them that the administration did not intend to test the practical value of the potential executive branch victories implied by *Chadha*. "The legislative veto was really a backbencher's idea," explained one of the White House officials responsible for negotiating with congressional leaders. "So even though the backbenchers would keep running around screaming and yelling and threatening us for a while, we knew that the committee chairmen would ultimately prevent them from doing anything other than letting off steam as long as we convinced them that we didn't plan to try any tricks."[43]

In addition to meeting privately with influential congressional leaders, administration officials testified publicly that they would not attempt to turn the loss of the legislative veto into an opportunity for undermining Congress's role in the policy-making process. Having told the House Judiciary Committee, "I want to emphasize as strongly as possible that the Executive Branch will continue, as it has done in the past, to observe scrupulously the 'reporting' and 'waiting' features that are central to virtually all existing legislative veto devices," Deputy Attorney General Edward Schmultz concluded his testimony by assuring the Committee that the Administration was intent on responding to the loss of the legislative veto with a "spirit of comity and mutual respect."[44] Deputy Secretary of State Kenneth Dam testified, similarly, that "the *practice* of executive-legislative relations need not undergo any immediate or radical change in the wake of *Chadha* . . . because it does not affect other statutory procedures by which Congress is informed of or involved in actions by the Executive Branch."[45]

Another part of the strategy for diffusing the legislative veto controversy led the administration to accept that statutes with tainted provisions would remain unamended. Technically, the Justice Department could have called upon all executive branch agencies to cease com-

[43] Interview with Reagan administration official, executive office of the president. The author, as a guest scholar at the Brookings Institution in Washington, DC, conducted a number of interviews while preparing this article; the names of the interviewees are not mentioned in order to maintain confidentiality.

[44] Deputy Attorney General Edward Schmultz, "The Supreme Court Decision in *INS v. Chadha*," Hearings before the Subcommittee on Administrative Law, Committee on the Judiciary, House of Representatives, 98th Congress, 1st sess., 18 and 21 July 1983, 4, 6.

[45] Deputy Secretary of State Kenneth Dam, "The Supreme Court Decision in *INS v. Chadha*," 125. (Emphasis in original.)

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plying with any of these tainted statutes. But as the official who chaired the White House policy council that developed the strategy for dealing with the legislative veto controversy explained:

> We decided not to ask the Hill to repeal all of those provisions that were clearly unconstitutional because it would just be an unnecessary workload for them. It was already clear that we had nothing to gain from trying to find ways of using *Chadha* to alter interbranch relations under any of these statutes, so we just agreed that those tainted legislative vetoes were no longer operable but that the rest of the statute remained unaffected.

Finally, the White House sent a memo to the heads of all executive departments directing them to "avoid unnecessary confrontation with the legislative branch" over the legislative veto issue.[46] Though individual bureaucrats might have expressed enthusiasm for the potential executive branch victories implied by Congress's loss of legislative veto power, administration policy on this matter reflected a clear understanding that any attempt to exercise a new found aggressiveness would simply give Congress an excuse to use any of its many powers to lash back at executive power.

Though clearly mistaken, White's overly broad definition of legislative veto continues to feed the widespread claim that Congress has failed to comply with the Court's invalidation of the mechanism. The view that Congress has "predictably . . . ignored the Court's preaching, as it should," springs from the incorrect belief that, in *Chadha*, the Court pronounced Congress to have "no business in executive affairs."[47] The tripartite constitutional structure obviously does not demand that members of Congress refrain from overseeing executive affairs. Those who insist on believing otherwise misunderstand the workings of the separation of powers system.

Abstaining from Functional Analysis

Justice White vigorously dissented from the majority opinion in *Chadha* because it invalidated the legislative veto without addressing the mechanism's functional value. This value was self-evident, according to

[46] OMB Bulletin #83-17, "Proposed Actions Pursuant to Statutes Containing Legislative Veto Provisions," 10 August 1983, "To the Heads of Executive Departments and Establishments."

[47] Louis Fisher, "Judicial Misjudgments About the Lawmaking Process: The Legislative Veto Case," *Public Administration Review* 45 (November 1985): 706; Louis Fisher, "Micromanagement by Congress: Reality and Mythology" in Gordon Cravitz and Jeremy Rabkin, eds., *The Fettered Presidency* (Washington, DC: American Enterprise Institute, 1989), 140–41.

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White, because the delegation of congressional power to administrative agencies had created "a veritable fourth branch of Government, which has deranged our three-branch legal theories" of the policy-making process.[48] Even a brief review of the history and development of the legislative veto, however, reveals that the mechanism's political significance had less to do with the policy-making process than White's analysis suggests.

Legal scholars have traced earlier manifestations of the legislative veto back to the very first session of Congress in 1789, but the veto mechanism that explicitly shortcut constitutional procedure developed in the 1930s, "in response to the problems of reorganizing the sprawling government structure created in response to the Depression."[49] The mechanism was less important in political practice than in academic circles, however, until the 1970s, when it began to be touted as a necessary congressional control tool.[50] The reasons for this are twofold. One involves the resurgence of Congress against what had become a postwar "Imperial Presidency."[51] The other involves congressional attempts to gain control over the "new regulatory regime" that grew out of the social regulation and regulatory reforms of the 1960s and 1970s.[52]

The Congress that was preparing to enter the decade of the 1970s was much different from the one that prompted Woodrow Wilson to call for constitutional reform at the turn of the century. Wilson complained that over the course of the Constitution's first century, Congress "entered more and more into the details of administration until it has virtually taken into its own hands all the substantial powers of government."[53] Indeed, throughout the nineteenth century, Congress was generally the dominant branch. But the political forces and demands that arose at the turn of the century led to a change in the interbranch balance of power. In particular, tremendous economic growth and the emergence of the United States as a world power created a need for executive power unfettered by detailed legislative control.

[48] 103 S.Ct. 2764, 2801.

[49] Ibid., 2794.

[50] In his extensive and exhaustive research, Joseph Cooper discovered that "roughly three quarters of the veto provisions enacted into law over the last half-century were enacted in the 1970s." Cooper, "The Legislative Veto in the 1980s."

[51] Arthur M. Schlesinger, Jr., *The Imperial Presidency* (Boston: Houghton Mifflin, 1973).

[52] Richard Harris, "A Decade of Reform" in Richard Harris and Sidney Milkis, eds., *Remaking American Politics* (Boulder, CO: Westview Press, 1989), 3.

[53] Wilson, *Congressional Government*, 49.

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Soon after these developments began to result in the expansion of executive power, the government's response to the Great Depression and to World War II delivered "the *coup de grace* to legislative supremacy."[54]

In the post-war period, bipartisanship in foreign policy helped sustain presidential dominance. The cold war policy of containment of communism, in a period overshadowed by the threat of nuclear war, carried with it the presumption that unchecked executive power was necessary for national security. The consequences of New Deal domestic policies also served to uphold executive branch dominance in the postwar period. The creation of large scale social service agencies during the Roosevelt administration led a majority of American citizens to expect tangible benefits from agencies. As a result, interest groups began to lobby Congress to delegate more of its policy-making authorities to agencies.[55]

The early 1970s brought a commitment to assertiveness among members who no longer wanted Congress to be perceived as weak and subservient. Awash in Vietnam and Watergate, the nation was becoming increasingly wary of the imperial presidency and looked to Congress to control the exercise of government power. As the Watergate scandal unraveled, constituents were eager to see their representatives engage in activities that seemed to tighten controls on executive branch discretion.[56] Richard Nixon further fanned the flames of suspicion toward executive power by directing agencies to thwart the policies enacted by a Democratically-controlled Congress. As a result, Congress could "no longer safely assume that Presidential power would be used benignly or prudently."[57]

In the context of this drive to reassert congressional power over executive power, the legislative veto became very popular among members of Congress. The exponential growth in the number of legislative

[54] "Regulatory Reform and Congressional Review of Agency Rules," Hearings Before the Subcommittee on Rules, House of Representatives 96th Congress, 1st sess., 11 July 1979, 12 September 1979, 24 and 31 October 1979, 15 November 1979, Part I, statement of Allen Schick, 1353.

[55] For analysis of this phenomenon from FDR to Bill Clinton, see Sidney Milkis, *The President and the Parties* (New York: Oxford, 1993).

[56] In *Keeping A Watchful Eye* (Washington, DC: Brookings, 1990), Joel Aberbach shows how the increase in congressional oversight activity in the 1970s was tied to increased distrust of executive power in the electorate.

[57] "Legislative Veto After *Chadha*," Hearings Before the House Committee on Rules, 9 and 10 November 1983, 23 and 29 February 1984, 1, 21, 22 March 1984, 10 May 1984, statement of Allen Schick.

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veto provisions enacted in the early 1970s reflected its apparent capacity to serve as a solution not only to the problem of the Imperial Presidency, but also to the need for new controls over regulatory authority.[58] Between 1968 and 1978, Congress "passed more regulatory statutes than it had in the nation's previous 179 years."[59] In 1960, the *Federal Register* contained 14,479 pages. By 1970, the figure had risen to 20,032; by 1975 to 60,221; and by 1980 it exceeded 87,000 pages. The delegation of regulatory authority to independent or executive agencies had always been accompanied by worries about protecting Congress's pride of place in the lawmaking process. The innovative veto mechanism promised to allow Congress to "regain" some of the power it had "lost" to administrative agencies during the twentieth century.[60] To garner support for the mechanism, Elliott Levitas, the legislative veto's greatest advocate, asked his colleagues to consider: "Who makes the laws in this country, the elected Representatives of the people or the unelected bureaucrats?"[61]

But the legislative veto was only one of many procedural innovations, naturally, inspired by the congressional need for enhanced control. "When Congress delegates but does not trust," after all, "it reaches for any means at its disposal to ensure that governmental power is not misused."[62] Justice White failed to take this into account. Consequently, he suffered from the "commonly" held misconception that the legislative veto was a creative new substitute for weaker, existing legislative controls.[63] The reason for this misconception is that the legislative veto was the only control mechanism in Congress's large bag of resurgent tricks that went so far as to amend constitutional procedure. The legislative veto attracted undue attention as a policy-making instrument because of its constitutionally suspect status. Such status gave it unique power to announce the great lengths to which

[58] R. Shep Melnick, *Regulation and the Courts* (Washington, DC: Brookings, 1983), 3.

[59] Ibid., 5.

[60] William West and Joseph Cooper, "The Congressional Veto and Administrative Rulemaking," *Political Science Quarterly* 98 (Summer 1983): 299.

[61] "Regulatory Reform and Congressional Review of Agency Rules," Hearings Before the Subcommittee on Rules of the House Rules Committee, 11 July 1979, 12 and 26 September 1979, 24 October 1979, 15 November 1979, statement of Representative Elliott Levitas.

[62] Allen Schick in "Legislative Veto After *Chadha*," 464.

[63] In describing this misconception, Allen Schick noted that "the 1970s demonstrated that legislative vetoes tend to be accompanied by other restrictions; rather than being substitutes for the veto, authorizations and appropriations controls are spawned by the same conditions that spur Congress to subject public agencies to other restrictions." Ibid.

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members were willing to go in order to address the grave problems facing the nation.

One representative recently referred to the legislative veto as one of the most explicit examples of members choosing to "ignore the Constitution" on an issue of "doubtful constitutionality." Faced with legal opinions that alerted them to the mechanism's questionable constitutionality, members chose to enact it into law anyway because they "decided that the legislative veto was more important than any constitutional questions. . . ."[64] The legislative veto became "the most forceful continuing expression of the congressional resurgence" against executive power in the 1970s because it authorized members to bypass constitutional procedure, not because it was of any consequence in determining policy outcomes.[65]

The great success of the legislative veto as a symbol of congressional control over administration is precisely what led a minority of members to oppose its enactment. Because it was much less relevant to members' demands for control over actual policy outcomes than it was to symbolizing congressional power, opponents of the legislative veto worried that its enactment would ironically undermine congressional oversight. Senator Wendell Ford (D–KY), for example, complained that the legislative veto "is a piece of legislation to go back home and beat our chests and say, 'Look what we've done. We have suppressed those regulatory agencies because we are going to look at the rules'. . . . The legislative veto is being used as a substitute for congressional direction and policy guidance to agencies. We are abdicating the responsibility our constituencies expect of us." The veto's popularity was a problem for Senator Ford precisely because "it provides only for an up or down vote on [particular] rules and does not provide a substitute for regular and periodic oversight. . . . [It] gives the false impression that the agencies are under control, and that no more congressional oversight is necessary. In my opinion, that is hogwash."[66]

Recent studies of congressional oversight confirm that the legislative veto never functioned as a significant mechanism for affecting policy outcomes. In the most extensive study of congressional oversight mechanisms to date, Joel Aberbach found that of the fourteen oversight

[64] *Congressional Record*, 19 April 1988, statement of Representative Robert S. Walker, H1713.

[65] For discussion of the congressional resurgence of the 1970s, see James Sundquist, *The Decline and Resurgence of Congress* (Washington, DC: Brookings, 1981); Lawrence Dodd and Richard Schott, *Congress and the Administrative State* (New York: Wiley, 1979).

[66] Senator Wendell Ford, *Congressional Record*, 25 July 1985, S 10040, 10064 (daily ed.).

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techniques examined in his study of the 95th Congress, the legislative veto ranked fourteenth in frequency of use.[67] And of the fourteen techniques, he found that the legislative veto ranked ninth in effectiveness. "For proponents of the legislative veto," Aberbach concludes, "this is probably a disappointing figure since it indicates that even users do not tend to rate the veto at the top of the effectiveness scale."[68]

By rolling up his sleeves and immersing himself in the actual workings of congressional oversight, Aberbach saw clearly the distinction between the formal legislative veto declared unconstitutional by the Court and the informal legislative veto that operates under report-and-wait provisions. "A possible reason for the veto not receiving a higher effectiveness score," he suggests, "is that 'non-statutory substitutes' for the veto seem to work equally well." Procedures that were not technically legislative vetoes, in other words, were the ones that actually did serve members in their quest to exercise control over the policy-making process.

The main spark that gave force to the legislative veto's symbolic power was freshman Congressman Elliott Levitas. Having grabbed onto the legislative veto as a tool that could at once make him popular at home and bring him a mark of distinction within Congress, Levitas took it upon himself in the 1970s to try to convince his colleagues that legislative veto authority was an essential and legitimate congressional prerogative. One member later commented:

> Levitas quickly became a royal pain in the neck about his legislative veto pet. He got amendments added in committee or on the floor to countless pieces of legislation— anything with regulatory power included—which of course in this day and age means practically every piece of legislation outside of appropriations bills. We were constantly fighting him off.[69]

A testament to Levitas's success, however, is that the Congress of the 1970s behaved like "a field of flowers, bending inexorably toward the sunlight of a hot new idea that promises to make all pain and complications go away."[70] Levitas's success in this regard, explained one former staff member of the House Subcommittee on Administrative Law, resulted from the legislative veto's symbolic power. It "was

[67] Joel Aberbach, *Keeping a Watchful Eye* (Washington, DC: Brookings, 1990): 132, table 6-1.
[68] Ibid., 136.
[69] Barbara Craig, *Chadha: The Story of An Epic Constitutional Struggle* (New York: Oxford University Press, 1988), 46.
[70] William Greider, "Sometimes Congress Does It Right," *Hartford Courant*, 16 September 1980.

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a great tool that members could use as show-and-tell in their districts to say they were beating up on pointy-headed bureaucrats." This symbolic power made it possible for Levitas to turn the legislative veto mechanism into "boilerplate" language in the 1970s: veto provisions were enacted into statutes somewhat routinely without much attention to whether they could actually ever prove useful to members in the implementation of the statute in question.

Levitas had "single-minded determination" to enact as many legislative veto provisions as possible.[71] Focusing on one example of the consequences of this determination helps clarify why so many unconstitutional provisions have remained unamended and why those that have been amended represent little more than congressional house cleaning. The legislative veto in the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) was not enacted until 1980, even though Levitas had tried to insert veto provisions in previous FIFRA reauthorizations.[72] A previous attempt had failed because the veto was considered unnecessary and superfluous.[73] In response to Levitas's question as to why his attempt to include a legislative veto had been prevented by the conference committee, Representative Tom Foley (D–WA) explained that "the Act [already] contains highly elaborate prospective review provisions before any action can be adopted." In addition, Foley noted, since

> this committee has followed the practice of keeping the program under such short authorization so that the entire program is subject to frequent review, we felt that the specific regulatory review by both Houses of Congress would not be necessary.[74]

When the same arguments for and against the veto were made again in the subsequent reauthorization cycle, however, Levitas got his way by virtue of his annoying persistance. The veto remained as unnecessary in 1980 as it had been in 1978. But it also remained as much of

[71] Barbara Craig, *The Legislative Veto: Congressional Control of Regulation* (Boulder, CO: Westview Press, 1982), 38.

[72] President Carter's signing statement noted, however, that "in approving this bill, I want to emphasize my view that §4 is unconstitutional. It purports to allow Congress to disapprove agency regulations issued under the FIFRA by a concurrent resolution not submitted to the President for his approval. The executive branch will treat this section as a report and wait provision and will not consider a congressional expression of disapproval under §4 to be legally binding." See *Presidential Papers*, 16 December 1980 (Washington, DC: U.S. Government Printing Office), 2814.

[73] PL 95-396, 30 September 1978.

[74] Representative Tom Foley, *Congressional Record*, 19 September 1978, H 10119.

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a valuable "credit-claimer" for members intent on acknowledging their constituents' skepticism about government regulation.[75]

The unconstitutional provision remained unamended until 1988, when the reauthorization of FIFRA gave Congress the opportunity to clean out obsolete provisions. The legislative veto was then amended to a report-and-wait provision.[76] When asked if this amendment had changed the balance of power between the branches in this particular statute, relevant Environmental Protection Agency (EPA) staff, interest group lobbyists, and congressional staff all found different reasons to say "no." One of the legal counsels at EPA noted that "*Chadha* didn't make report-and-waits unconstitutional. And that is where Congress' power is—keeping the administrative burden on us to report all of our regulations up there." One of the directors of a pesticide lobby group explained that the elimination of the legislative veto made no practical difference because it had never been valued as a way of controlling EPA's pesticide licensing activities:

> The FIFRA legislative veto was a two-chamber veto. So to use it, we would have had to have the committee bring our concerns onto the floor. That is not something we ever wanted to do. It was much easier for us to work our concerns solely through the committee and the agency. Now, you don't need to interpret this in a sinister way. It's not that we wanted to keep things off the floor because we were making off like bandits somewhere. It's just that the issues involved in these licenses are very technical. And bringing these issues onto the floor would have risked touching irrelevant political hot potatoes.

One congressional staff member who had worked on the FIFRA statute since the enactment of the legislative veto echoed these explanations of the mechanism's insignificance. "They put the legislative veto in there," she said, "because it was a very popular way to show that they were doing something about controlling the growth of government. There was a big perceived need for having a legislative veto but it never really did that much for us in terms of controlling the agency, so when *Chadha* turned it into a report-and-wait, nothing changed." Clearly, acknowledging that the legislative veto was a powerful symbol

[75] The term "credit-claimer" is from David Mayhew, *The Electoral Connection* (New Haven: Yale University Press, 1974), in which he defines the variety of objectives that members of Congress try to fulfill in attempting to get reelected. Claiming credit for doing good is one of them. For a thorough explanation of the variety of factors that helped the FIFRA statute to pass in 1980, see Christopher Bosso, *Pesticides and Politics* (Pittsburgh: University of Pittsburgh Press, 1987), 178–206.

[76] 7 USC 136w.

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of congressional control is a far cry from establishing the mechanism's indispensability to the policy-making process.

Conclusion

Justice White overstated his case when he claimed that the legislative veto's significance for enabling Congress "to fulfill its designated role under Article I as the nation's lawmaker . . . can hardly be overstated."[77] He viewed the legislative veto as an indispensable innovation, because he failed to take account of the wide variety of complex institutional changes that accompanied the delegation of congressional power and rise of American administrative capacities in the twentieth century.[78] He blindly asserted that without the authority to bypass or amend some of the procedural requirements upholding the tripartite constitutional structure, members of Congress would not be able to exercise control over delegated authorities. But this assertion is clearly wrong: the decentralization of Congress—requiring executive branch officials to communicate with a much larger number of members in building support for executive branch policies and budget requests—has unquestionably played a central role in facilitating congressional control of administration.[79] Members have proven capable of exercising strict control over policy implementation, furthermore, by drafting extremely detailed statutes.[80] In addition, as courts have become increasingly tangled up

[77] 103 S.Ct. 2764, 2793, 2796.

[78] He also presumed that broad delegations of congressional power are unconstitutional. For elaborations of this presumption, see David Schoenbrod, *Power Without Responsibility* (New Haven: Yale University Press, 1994); Bruce Ackerman, *We The People* (Cambridge, MA: Harvard University Press, 1991). But see Donald Brand, *Corporatism and the Rule of Law* (Ithaca, NY: Cornell University Press, 1988) and Sotirious Barber, *The Constitution and the Delegation of Congressional Power* (Chicago: University of Chicago Press, 1975) who show through analysis of the first debates over the constitutionality of congressional delegation that Chief Justice John Marshall, President George Washington and his cabinet, and the members of the first Congress, all agreed that the Constitution possessed the flexibility necessary to allow for "very extensive delegations of congressional power" (Brand, 293).

[79] For a discussion of the causes and development of this decentralization, see Joel Aberbach, *Keeping A Watchful Eye: The Politics of Congressional Oversight* (Washington, DC: Brookings, 1990); for more specific examples and personal accounts of structural changes within Congress since the 1960s that have profoundly increased congressional power vis-à-vis the executive branch, see Joseph Califano, "The Imperial Congress," *New York Times Magazine*, 23 January 1994. None of these changes analyzed by Aberbach or Califano required constitutional reform of the separation of powers.

[80] See James Q. Wilson, *Bureaucracy* (New York: Basic, 1989) for descriptions and analysis of the extensive control mechanisms—all perfectly constitutional—that members of Congress have developed to restrain bureaucrats from exercising unchecked powers. This is not to say that it is good for members to be exercising tight control over delegated authorities. But it is also not necessarily

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in determining the ways in which agencies exercise their administrative powers, warnings about unaccountable bureaucrats wielding unlimited regulatory powers have rung increasingly hollow.[81]

White allowed faulty assumptions to drive his analysis of the legislative veto because he never engaged in the sort of functional analysis his logic required, an analysis that would have led him to see the irrelevance of the legislative veto to the balance of policy-making power between the branches. Public choice theorists eager to rely on Justice White's dissent as a building block for studying the "Court/Congress/President Game" should find his mistakes especially instructive.[82] Importing unexamined assumptions about constitutional structure and procedure into their models—however popular or conventional these views might be—will inevitably distort their account of the separation of powers at work.

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bad. See Robert Gilmour and Alexis Halley, eds., *Beyond Distrust* (Washington, DC: National Academy of Public Administration, 1992), a collection of case studies of micromanagement showing that intensive, continuous congressional oversight can be beneficial for policy implementation. It is not difficult to establish, at any rate, that members of Congress do not need constitutional amendments to allow them to exercise oversight of delegated authorities.

[81] Martin Shapiro, *Who Guards the Guardians?* (Athens: University of Georgia Press, 1988); R. Shep Melnick, *Between the Lines* (Washington, DC: Brookings, 1994); Robert Katzmann, *Institutional Disability* (Washington, DC: Brookings, 1989).

[82] See William N. Eskridge, Jr., "Reneging on History: Playing the Court/Congress/President Civil Rights Game," *California Law Review* 79 (May 1991): 613.

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Republicanism and the Vigorous Executive: A Review Essay

DONALD R. BRAND

At the beginning of *The Federalist*, No. 70, Alexander Hamilton notes that the idea that "a vigorous Executive is inconsistent with the genius of republican government" is "not without its advocates." This is as true today as it was in 1787. However well established the role of the vigorous executive may appear to be in American political practice, its legitimacy in political science is still a matter of fundamental dispute. Republican suspicion of the strong executive is detectable in three important books published in 1993 that focus on the American presidency. Bruce Miroff's *Icons of Democracy*, Sidney Milkis's *The President and the Parties*, and Stephen Skowronek's *The Politics Presidents Make* all take a broadly historical approach to the American presidency; and in their disparate ways each comes to the ultimate conclusion that a vigorous executive is incompatible with democratic government.[1] All of these authors might take exception to this characterization of their work, so this proposition must be demonstrated.

Bruce Miroff begins his book with reflections on the tension between democracy and a vigorous executive. Like Hamilton in *The Federalist*,

[1] Bruce Miroff, *Icons of Democracy: American Leaders as Heroes, Aristocrats, Dissenters, and Democrats* (New York: Basic Books, 1993); Sidney M. Milkis, *The President and the Parties: The Transformation of the American Party System since the New Deal* (New York: Oxford University Press, 1993); Stephen Skowronek, *The Politics Presidents Make: Leadership from John Adams to George Bush* (Cambridge, MA: Belknap Press of Harvard University Press, 1993).

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No. 70, Miroff argues that the viability of democracy depends upon a reconciliation of their conflicting demands, but the resemblance to Hamilton is misleading. Miroff attempts to define a style of leadership, the democratic style, which empowers its followers rather than reducing them to the role of passive spectators. He rejects as incompatible with democracy two other styles of leadership, which he labels the aristocratic and the heroic styles. The aristocratic style of leadership is characterized by an explicit rejection of democracy and democratic values; the heroic style of leadership couples a hypocritical verbal affirmation of democracy with a tacitly aristocratic style of leadership. A fourth style, the dissenting style found in selected leaders of mass protest movements, might be thought of as the seedbed of genuinely democratic leadership. Since the leaders of protest movements lack institutional support for their leadership claims, they must, Miroff argues, remain closer to their followers in a manner that prefigures the appropriate style for a democratic leader. The distance between Miroff's reconciliation of democracy and leadership and Hamilton's reconciliation of executive energy and republican government is evident in Miroff's relegation of Hamilton to the rejected aristocratic style of leadership.

A powerful indicator that Miroff's purported reconciliation of democracy and leadership is in fact a rhetorical device that strips leadership of the capacity to lead is his evident sympathy for participatory democracy. Hamilton's defense of a vigorous executive is linked to a broader argument about the defects of "pure" democracy and the comparative virtues of representative democracy. If even representative democracy is suspect because it creates an elite class of representatives to serve in a legislative body and thereby strips citizens of powers they would have in a participatory democracy, then what is the likelihood that a participatory democrat will truly carve out a role for a vigorous executive. Representative democracy is an indispensable precondition for the marriage of democracy and a vigorous executive; and a participatory democrat is in love with democracy too much to make serious concessions needed to make the marriage work.

If Miroff is devoted to participatory democracy, then what are we to make of his admiration for Abraham Lincoln and Franklin Roosevelt, the two exemplars of the democratic style of leadership? While Miroff admires Lincoln, it is not so clear that he understands him. Lincoln's political life was devoted to the preservation of the Framer's Constitution, which went so far in moving Americans from a decentral-

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ized regime conducive to local, participatory democracy to a more centralized regime where representative democracy replaced participatory democracy. Nor did Lincoln demand that his citizens thoroughly subordinate their self-interest to the common good in the way that participatory democrats are inclined to demand such sacrifices. Of course Lincoln did ask for sacrifices, but he didn't moralistically scorn the pursuit of self-interest. He was a good party man who used patronage (a practice that ties citizens to public office through private interests rather than public devotion) to shore up the prospects of the Republican party, which was committed to an agenda of capitalist economic development. If Lincoln is the paradigmatic example of the modern vigorous executive, and if Miroff can only admire Lincoln after dressing him up in the alien garb of a classical republican, then there are legitimate grounds for questioning Miroff's openness to a vigorous executive.

Miroff's rejection of Theodore Roosevelt's style of leadership also reflects a suspicion of vigorous executives that is more sweeping than his explicit formulations suggest. He emphasizes TR's egotism and assumes that because he dominated virtually any social or political function he attended the tendency of his form of leadership was to transform citizens into passive followers. In fact, TR provided the upper and middle classes with a model combining political involvement and moral integrity in an era when politics was dominated by corrupt city machines. He inspired participation, not passivity. Miroff criticizes TR's emphasis on masculinity, arguing that genuine leadership is a blend of the masculine and feminine. Since femininity is identified with caring and nurturing, Miroff seems to be using the metaphor of blending masculine and feminine to signify the development of a republican ethic that is less oriented to war and more committed to compassion than the ethic of the classical republic. Leaving aside the question of the feasibility of a republicanism that does not rely upon war to induce public spiritedness, what Miroff's analysis ignores is the close relationship between the idea of a vigorous executive and the critique of republican virtue carried out by the founders of modern liberalism, a relationship brilliantly described in Harvey Mansfield's *Taming the Prince*. Miroff wants to tame the prince through a modified republican ethics, but the presupposition of the vigorous executive is a relaxation of republican ethics, classical or modified, in favor of other restraints like the institutional ones devised by the American Framers. Miroff's strategy for taming the prince would only appear

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plausible to someone whose conception of the prince was rather anemic to begin with.

Milkis's *The President and the Parties* is a sweeping survey of presidential politics and its relationship to American political parties from the New Deal to the Reagan years. In a stunning revision of traditional interpretations of the New Deal, Milkis shows that the revitalization of parties during the 1930s and 1940s was to a considerable extent the short-term and unintended consequence of Franklin D. Roosevelt's deliberate plan to marginalize political parties and institutionalize a bureaucratic state. Milkis rightly emphasizes Roosevelt's promulgation of a new Bill of Rights that elevated economic rights like the right to a decent job or the right to decent housing to the status of such formerly privileged political rights as the right to free speech. This was a revolutionary change in the character of the American regime and it did presage the development of a bureaucratic state. What had been considered matters of policy became matters of fundamental right, and the legitimacy of partisan conflict over those policies gave way to the demand for a consensus in defense of all fundamental rights. The paternalistic state implied in the New Deal conception of economic rights subverted the self-reliant voter presupposed by a system of stable partisan conflict. Milkis felicitously describes this transformed liberalism as programmatic liberalism.

With the developed sensibilities of a Tocquevillian, Milkis sees the despotism lurking in the seeming beneficence of the New Deal bureaucratic state, and he calls for a restoration of the primacy of politics over administration as an indispensable step in the restoration of a genuine liberalism. What is far more problematic is Milkis's assertion that the vigorous executive institutionalized by the New Deal is no more than an integral component of the administrative state and that the restoration of the primacy of politics over administration entails the restoration of the primacy of the legislative branch over the executive. In fact, the bureaucratic state and a vigorous executive are antithetical. A vigorous executive would have nothing to do in a post-political age without conflicts.

If the linkage between the bureaucratic state fashioned by the New Deal and the modern presidency, which institutionalized the vigorous presidency of Franklin Roosevelt, is far more problematic than Milkis recognizes, then Milkis's criticisms of the latter are misdirected. If his deepest concern is the replacement of politics by administration, then FDR and his successors should not be faulted for their vigorous exercise

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of presidential powers per se but for the ends (programmatic liberalism) they adopted. This would also imply that Milkis's even-handed and nonpartisan criticism of Ronald Reagan for being the same kind of vigorous executive as FDR is inappropriate. Reagan can hardly be accused of having embraced programmatic liberalism, and to the extent that his vigorous exercise of presidential powers was in the service of restoring traditional American liberalism and reducing the scope of the state, Milkis should find grounds for approval.

Certainly a powerful executive is not exclusively linked to programmatic liberalism. The Hamiltonian presidency was both vigorous and powerful, but it defended the rights defined by the original Bill of Rights rather than the entitlements endorsed by programmatic liberalism. Revealingly, Milkis does not devote enough attention to exploring the Hamiltonian roots of the modern presidency, in part because he misleadingly describes pre-New Deal America as a regime of courts and parties. If a vigorous executive is needed to protect the political rights identified by traditional American liberalism, and the Lincoln presidency amply confirms the wisdom of that proposition, then it is inconsistent to affirm a traditional conception of rights and deny the means for their realization. Moreover, a powerful executive can invigorate parties rather than subvert them if the president focuses partisan conflict by providing a comprehensive, principled agenda against which partisans can react. This should be an important consideration for an author who rightly sees the decline of political parties as one of the most serious indicators of political decay in the American polity.

Stephen Skowronek's *The Politics Presidents Make* is the most ambitious book on the American presidency published in the last several years. Skowronek's argument is complex. He identifies a recurrent pattern in presidential politics by implicitly tying presidential histories to the party realignment literature and thereby avoiding one of the standard pitfalls of presidential studies—the tendency to overemphasize the uniqueness of each presidency. Reconstructive presidents repudiate the existing political order and establish a new order in its place. Articulation presidents attempt to maintain and develop the order fashioned by their reconstructive predecessor. Disjunctive presidents unhappily preside over the dissolution of that order after historical changes have sapped its viability. Ironically, many of the historical changes that undermine the order created by a reconstructive president are the unintended consequences of presidents who are trying to maintain that order. Presidential action is inherently disruptive, and the

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inevitable cumulative impact of presidential action will be the disruption of the existing presidential regime. The category of preemptive presidencies identifies presidents who have either acquiesced to the dominant presidential regime while also acting beyond its bounds or presidents who have suspended the dominant presidential regime without founding a new order. This is a residual category that lumps together such disparate presidents as Woodrow Wilson, Dwight Eisenhower, and Richard Nixon; but it is an important category, since Skowronek turns to it in developing his prescriptions for reform.

Reconstructive presidents have historically dominated the political landscape. While it might seem to be a simpler task to maintain an existing order than to found one, Skowronek follows in Machiavelli's footsteps (Machiavelli recommended "new modes and orders" for his princes). Skowronek argues that this is not the case. He appropriately highlights the relationship between running for office and governing once in office, and notes that presidents whose campaigns are defined by a repudiation of the preceding political regime (then embodied in a hapless disjunctive president) will govern most successfully. The task of founding a new political order will elicit approval even when new policies fail. The fact that many New Deal policies failed to alleviate the Depression did little to dampen enthusiasm for the New Deal. The New Deal gave meaning to citizens, and citizens do not live by bread alone. There is an important kernel of truth in this, but the importance of a prosperous economy to the reelection hopes of incumbent presidents surely reminds us that citizens do not live by meaning alone either.

Skowronek's glowing descriptions of past reconstructive presidents are not his final word. This becomes clear in his chapter on Ronald Reagan, who Skowronek admits is cast in the reconstructive mold but whom he also severely criticizes. Skowronek faults Reagan for such specifics as budget deficits and the Iran-contra scandal, but also more generally for his disruptive role. One might suspect that partisan bias is at work here, since preceding reconstructive presidents were praised for being disruptive. Skowronek justifies this seeming anomaly by arguing that the cyclical historical pattern described above coexists with secular trends toward a more densely organized society and toward increasing presidential power. In modern society reconstructive presidents are dangerous because their enhanced powers will bring about far more destruction in a more densely organized society. The resultant harms will outweigh any benefits. In this new age what are

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called for are preemptive presidents—a vague prescription at best, given the absence of any case studies of preemptive presidents in his book and its status as a residual category.

Skowronek's thesis is questionable on at least two grounds. First, a good case can be made that presidential powers have eroded over the past twenty years rather than steadily increasing. Second, even if modern society has become more densely organized, it can be argued that this has only increased the need for reconstructive presidents to introduce needed changes to overcome bureaucratic rigidity. Therefore the devices we develop to control abuses of presidential power must not be so restrictive that they deny presidents the power they need to introduce salutary innovations. Since Skowronek's analysis invalidates appeals by current presidents to the models provided by such past great presidents as Jefferson, Jackson, Lincoln, and Franklin Roosevelt, it fails this test.

Skowronek's attempt to reign in the Machiavellian princes he identifies as having dominated presidential history does not rely primarily upon formal constitutions and their separation of powers. Skowronek seems to share the social scientist's scorn for "mere forms," and his story of the American presidency has only the briefest of allusions to the evolution of the presidency in constitutional law. Nor do elections discipline potential princes sufficiently; our currently unenlightened electorate still longs for strong leader types. They mistakenly elected Reagan in 1980, and they might be misled again. Indeed, Skowronek's attempt to reign in the Machiavellian prince does not significantly rely upon any of the historical devices utilized by classical liberalism.

Skowronek's attempt to reign in the prince might be described as providing princes with a new historical consciousness. Throughout his book, Skowronek deflates the leadership pretensions of princes and the inclination to hero worship of political commentators. While he does not go as far as to say that the abilities and virtues of the men who have been president are irrelevant to the stories of their presidencies, he does come close. He deflects attention from the shortcomings of skill in the least successful presidents like Herbert Hoover or Jimmy Carter, and he emphasizes the intractable conflicts that define their situations. The most successful presidents have the good fortune to follow the least successful, and they were not judged by the consequences of their policies. They were bold, but not necessarily prudent. Future presidents must become more self-conscious about the realities that circumscribe the modern presidency and that have been obscured by

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a simple-minded moralism that equates success with moral virtue. If presidents would only recognize that their power to do harm has become significantly greater than their power to do good and resign themselves to a modest but constructive role within their broader fate (that is, be a preemptive president rather than a reconstructive one, but with the consolation that disjunctive presidents are also the relic of a bygone era), then they can make a contribution to the common good.

In a simple moral framework, virtue is rewarded and vice is punished; so virtuous presidents bring prosperity in their footsteps. Social science plays a constructive role when it discloses the extent to which prosperity is the product of forces beyond the control of presidents. But social science ceases to play a constructive role when its illumination of constraints shades into overweening determinism, which subverts the realm of human freedom and prudent leadership. As useful as it is to be reminded of the constraints hemming in presidents, and as indispensable as it is to realistically reconstruct those constraints in assessing the merits of past presidents, the more fundamental imperative of a political science that aspires to influence political life is to foster a longing for greatness in presidents by defending past greatness from unfair attacks and highlighting the opportunities as well as the constraints of the current situation. The aspiration for greatness needs the encouragement of political science, because in other ways liberal democratic regimes are not conducive to this aspiration. (See Tocqueville's analysis of why great men don't become presidents.) If mediocrity is the fundamental problem, then a political science that encourages mediocrity is part of the problem rather then part of the solution. Skowronek's historicism encourages presidential mediocrity. Two hundred years after Hamilton asked whether republican government and executive vigor could be reconciled, the answer is still not clear.

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Book Reviews

Diplomacy *by Henry Kissinger. New York, Simon & Schuster, 1994. 912 pp. $35.00.*

As Machiavelli looked to the history of Rome for guidance on the governance of states, so Kissinger looks to the history of Western diplomacy for lessons in the conduct of international relations. Machiavelli is not remembered as an historian but as a political philosopher; Kissinger's latest should be studied less as the history of diplomacy than as its philosophy.

Not that it isn't engaging history. Kissinger tells a lively tale, sprinkled with judgments that gain credibility coming from a member of the exclusive club of great-power foreign ministers. Kissinger has been many years out of the classroom, but he hasn't forgotten how to write a good lecture.

Like all compelling lectures, these have a moral and a theme. The theme is the interplay between two traditions in Western diplomacy. The first tradition originated with Cardinal Richelieu and characterized the craft of international relations until the early twentieth century. This is the *realpolitik* tradition of national interest and the balance of power. The second tradition was proclaimed by Woodrow Wilson and represented an attempt to apply American ideals to the world at large. The Wilsonian tradition recognized no distinction between the morality of nations and the morality of individuals, and where the advocates of *realpolitik* looked to the balance of power to secure stability, the Wilsonians preached collective security—in its original League of Nations sense, not as the excuse for alliance building it became in the post-1945 era.

The moral of Kissinger's story is the need for less Wilson and more Richelieu in American foreign policy. He ascribes such success as American diplomacy has achieved to the elbowing aside of idealism by national interest. Having devoted a couple thousand pages in his memoirs to his own exploits in office, he adds little here of either detail or explicit self-justification. Yet the reader can be excused for interpreting his praise for Richard Nixon's diplomacy as implicit self-praise. And there is more than a hint of hurt when he complains of neoconservative criticism of Nixon's policies. "Dedicated anticommunists, the neoconservatives might have been expected to turn into moral supporters of an administration

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which had persisted in Vietnam in largest part to maintain America's claim to be manning the anticommunist ramparts." But the neonservatives allowed ideological zeal to blind them to geopolitical realities, and they gave Nixon (read: and Kissinger) "no credit for enduring the bitter struggle for an honorable peace" (p. 744). Considering the neoconservatives' treatment of Kissinger, he had reason to be upset; after twenty years he still is.

This is diplomatic history as not even diplomatic historians write it any more. Kissinger concentrates almost exclusively on what diplomats and their bosses said and did; he pays next to no attention to the economic and social developments that provided those individuals the power they wielded. And he is too beguiled by words: when he takes American leaders to task for excessive moralism, he fails to discount sufficiently for political rhetoric. More often than he allows, the speeches were rationalizations rather than explanations.

The practitioner in Kissinger considers the Wilsonian strain a nuisance, but the historian in him cannot deny the power of idealism in American history. The task of the policy maker, he says, is to strike a balance between idealism and realism. Again using Nixon as a stand-in for himself, and in this case as a model of what American leaders should strive for, he asserts that the thirty-seventh president attempted "to define a *sustainable* role for an idealistic America in an unprecedentedly complex international environment—one in which, in Nixon's mind, Wilsonianism and *Realpolitik* would merge" (p. 707). Not bad advice.

H. W. BRANDS
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Out of Control: Global Turmoil on the Eve of the Twenty-First Century *by Zbigniew Brzezinski. New York, Macmillan Publishing, 1993. 240 pp. $21.00.*

With the end of the cold war, U.S. ascendancy as the sole superpower, and the corresponding decline of the "declinist" debate in the United States, futurists have raised their sights now to predict the fate of the emerging world society. Optimists, like Francis Fukuyama, confidently announce the end of the history with the purportedly inevitable spread of liberal democratic values; John Mueller posits the end of war as a human institution; and Max Singer and the late Aaron Wildavsky exalt the West's victory in the cold war and the creation of a zone of peace in an otherwise turbulent world. So why worry?

For those acquainted with his previous work, Zbigniew Brzezinski sides, not unexpectedly, with the pessimists, joining Paul Kennedy (coming Malthusian disaster), Samuel P. Huntington (ineluctable culture clash), and Robert Kaplan (pure chaos). Brzezinski's *tour d'horizon*, ranging from communal and national

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strife to the increasing split between the rich and the poor, provides a quick reference of the many ills besetting the world and the United States. Brzezinski's list is sufficiently long and lugubrious enough to cheer the most implacably dour and dispirited. For example, he identifies twenty urgent problems—too many to cover here—that need fixing before the United States can regain what he sees as its slipping moral footing as a prerequisite to reestablish its authority to lead a world spinning out of control.

Brzezinski's "marginal value added" to the debate over the future of the world society is his insistence on the deterioration of the human spirit in mindless pursuit of material plenty and hedonistic pleasure as the primary source of our discontents. According to Brzezinski, this century's coercive solutions to human problems—Nazism, Fascism, and Soviet Communism—defeated themselves. The West, driven by what he characterizes as a mentality of "Permissive Cornucopia," is heading for the same fall. The West's spiritual deconstruction leads to a rudderless and aimless world society, heir to enlarging disarray and self-destructive conflict.

Whereas the East-West struggle joined decisive moral issues that drove the global modernization process, the unexpected demise of communism abruptly destroyed one of the principal animating forces of productive change. Now Brzezinski paints a picture of a world out of control, putatively attributable in great measure to a morally decaying West and a self-indulgent United States who have relinquished their leadership responsibilities. During the cold war the peoples of the world society could clap for the East or the West; the end of the East-West struggle left the world clapping with only one hand; the world today claps, Brzezinski suggests, with no hands.

Brzezinski's broadsides work well as arresting rhetoric. They are less useful as diagnostic tools for identifying global ills; much less do they serve as reliable policy prescriptions. Cassandrian declamations of Western corruption, however valid, need greater substantiation of their pervasive effect (or presence) than repeated assertion of their perverse impact. Brzezinski rarely spells out the moral content of this decay; nor does he provide much help in defining what a universal moral vision, appealing to a world society divided against itself, might be.

Included, for example, among the culprits of moral depravity are those who would use modern science to manipulate genetic material and television programmers bereft of ethical limits. Are we supposed then to halt medical science and recruit more TV censors? Who's to decide these matters and by what standards? There's the rub, but it is precisely at these critical friction points that the discussion either trails away or veers course for a hasty look at still another worldly problem.

The benefits of Brzezinski's repeated calls for more self-restraint, an unexceptionable remonstrance, are never delineated. To the have-nots—now most of humanity—these chidings are thin gruel, in some ways even less nourishing, arguably, than the opiates of the coming utopia that many were forced to swallow before. Brzezinski's prescriptions favoring a strengthened trilateral cooperation (he's on the board of the Trilateral Committee) and a stronger UN seem to be

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little more than placebos for what may be a terminally ill patient. The cold war victors show little inclination to part with their power, pelf, or privilege, and Brzezinski resists prescribing stiff medicine, consistent with his dire diagnoses, either to enfranchise the disadvantaged or to restore the West's crumbling moral fiber. His temporizing over even the modest proposal of enlarging the permanent members of the UN Security Council—because current permanent members might object, indeed!—suggests the yawning gap between his prediction of coming chaos and the solutions needed to cope with a world "Out of Control."

The book is a useful antidote to optimists satisfied with the West's victory in the cold war. Brzezinski's recounting of global problems is fulsome, if breathless. At times what he has to say is penetrating, particularly when he addresses the problems facing the peoples of the former Soviet Union, where his expertise is sure. When his focus enlarges, his argument, accordingly (and alas), goes out of control.

EDWARD A. KOLODZIEJ
University of Illinois, Urbana-Champaign

Thatcher, Reagan, Mulroney: In Search of a New Bureaucracy *by Donald J. Savoie. Pittsburgh, University of Pittsburgh Press, 1994. 414 pp. Cloth, $49.95; paper, $29.95.*

Most studies of political executives are confined to a single nation. In contrast, Savoie compares the experience of Britain, the United States, and Canada in the 1980s in reforming their bureaucracies. Savoie shows that pressures to change the modern state are not unique to each country but reflect wider forces.

Most of the book is about the attempts to improve government efficiency. Savoie traces many current criticisms of government inefficiency back to the 1950s. The vast growth in the size and responsibilities of the modern state made it perhaps inevitable that there would be an increased concern about the bureaucracy's efficiency. Budgetary difficulties of the 1970s and 1980s strengthened pressures for reform. Greater efficiency became the way in which politicians could reconcile their voters' demands for low taxation and high levels of government spending.

As Savoie shows, the dominant approach to achieving greater efficiency in Britain, Canada, and the United States has been based on the belief that the closer government approximates the private sector, the more efficient it will be. Britain was of course the exemplar. After ad hoc savings were achieved on the basis of recommendations from a team led by a Marks and Spencer business executive, the Thatcher and Major governments transformed the structure of government through the "Next Steps" program to make bureaucratic units as much like private contractors as possible and pressed for the privatization of as many government services (including prisons) as possible.

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The belief in the superiority of the private sector was part of the neoconservative faith of Ronald Reagan, Margaret Thatcher, and Brian Mulroney. And here we reach the most interesting aspect of Savoie's story for political scientists as opposed to public administrators. Thatcher, Reagan and Mulroney were more hostile to the state apparatus than any other modern politicians. Reagan's well known aphorism that "government isn't the answer, it's the problem" was frequently transformed into the belief that it is the people in government, or more precisely, in the bureaucracies, who are the problem. The gurus of the new Right, particularly the public choice theorists, provided rationales for this belief; the budget- or agency-maximizing bureaucrat has become a common place of political discussion as well as of certain types of political science. In all countries, the disregard for the accumulated experience of the bureaucracy was dangerous. In Britain and Canada, where the bureaucracy has been expected to function as the brain of government as well as its hands, devising and critiquing policies as well as implementing them, the tensions between permanent bureaucrats and politicians hostile to them were fascinating. The refusal of ministers to listen seriously to warnings from the senior civil servants they despised about the consequences of their policies resulted in foreseeable policy disasters to the cost of both the public, and in the case of the British poll tax, ultimately the politicians themselves.

As Savoie's book is concerned primarily with the quest for managerial efficiency, it says less than I would like about the consequences for policy making of increased tension between bureaucrats and politicians. This criticism is purely one of balance, however, as Savoie is certainly aware of the issue. My other criticisms of this book are also limited. Although no comparativist can cover every relevant case, it is surprising that no mention is made of the radical changes in the bureaucracies of Australia and New Zealand, all the more interesting for being carried through by social democrats, not rightists. Richard Luce's and Clement Attlee's names are misspelled. Savoie was obliged to rely on published sources supplemented by relatively few interviews in each country and in consequence too often accepts official descriptions of reforms. In general, however, Savoie's book is a useful and illuminating account of the quest for greater managerial efficiency in three countries. He illustrates the value of a comparative perspective.

GRAHAM K. WILSON
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Ideas and Foreign Policy: Beliefs, Institutions, and Political Change *edited by Judith Goldstein and Robert Keohane. Ithaca, NY, Cornell University Press, 1993. 308 pp. Cloth, $37.50; paper, $14.95.*

As Goldstein and Keohane note, the question of the interrelationships between material interests and ideas is among the oldest and most important topics in

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social science. Any contribution to it is to be welcomed. But in an area in which Max Weber, Karl Marx, and Karl Mannheim contradicted themselves as well as each other, our expectations should not be too high.

As is true for most collections of essays, this volume is held together more by its binding than by unifying analysis. The editors divide ideas into world views, principled beliefs, and causal beliefs. As they note, these categories overlap and alternative typologies have been and can be used as well. They also point to three pathways by which ideas can have influence: the need for actors to have "road maps" to guide them to their destinations, the role of ideas in specifying which of many possible equilibria will be arrived at, and the way in which ideas become embodied in institutions. This three-fold distinction, which is useful but does not exhaust the ways in which ideas can matter, is used to group the essays into sections. Ideas as road maps are discussed by John Ikenberry (Keynesianism and the post-World War II economic order), Nina Halpern (Stalinist ideas guiding Chinese and East European economies), Robert Jackson (the declining legitimacy of imperialism as undermining colonialism), and Kathryn Sikkink (the growing acceptance of human rights). The role of ideas as focal points in solving coordination problems is discussed by Geoffrey Garrett and Barry Weingast in the context of the European Community and by John Ferejohn in the development of parliamentary control in early Stuart England. The institutionalization of ideas is treated by Stephen Krasner's discussion of the establishment of the Westphalia system and Peter Katzenstein's analysis of German and Japanese ways of coping with terrorism.

The essays provide interesting descriptions, and their value varies inversely with the reader's familiarity with the subject matter. Although each essay has its own strengths and weaknesses, all of them are well researched and sensible. But, as a collection, they have a number of problems. First, the concept of "ideas" is not well bounded; there is no discussion of how it is related to concepts like ideology, norms, and political cultures. Indeed, Katzenstein's essay is built around the latter two concepts. Second, the one essay in the volume that purports to cover the relevant social science literature (by John Hall) restricts its focus to sociology, and indeed even to one part of this field. As a result, the book ignores much of what has been done in disciplines such as anthropology, psychology, and economics, as well as previous work in political science in general and foreign policy formation in particular. Third, the test the editors set for their contributors is much too easy: the null hypothesis that they seek to disprove is that material interests can entirely account for behavior. But this makes a straw man of the materialist position and guarantees that ideas will appear to be important; any factor will look important if we attribute all the unexplained variance to it. Third, and most important, the editors "do not seek to explain the sources of . . . ideas; we focus on their effects" (p. 7). The difficulty is not only that explaining the sources of ideas is perhaps the more interesting and less examined of the two tasks, but that the two cannot be readily separated. There will always be some

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ideas that correspond to the state's policy, and it is trivially easy after the fact to take any behavior or policy and point to its intellectual antecedents. A significant argument requires one to explain why some ideas and not others find their way into policy. The editors note but do not adequately deal with the danger that any correlation between ideas and behavior may be spurious. Without better analytic control over the causes of the ideas, the essays cannot show that the behavior can be traced to them.

Partly as a result of these problems, the authors conclude that both ideas and material interests play significant roles. While such a "middle ground" (pp. 42, 46, 61, 119, 127–8) is a safe—and I believe correct—place to be, it is familiar territory. It is then perhaps not surprising that the book lacks a concluding chapter.

ROBERT JERVIS
Columbia University

Power Without Responsibility: How Congress Abuses the People through Delegation *by David Schoenbrod. New Haven, Yale University Press, 1994. 260 pp. $28.50.*

This author makes a persuasive case for changing thinking and practice with respect to the delegation of legislative power. The analysis is cogent and insightful along many dimensions. The author fully grasps the normative and institutional ideals of the Framers. He understands that the underlying aims of government are moral—to promote liberty and justice—and that the defining task is to establish a set of institutions that avoid self-interested or exploitive rule by either majorities or minorities. He further understands the rationale for constructing such institutions on the basis of a separation of powers, checks and balances, multiple forms of constituency, and federalism as well as why this rationale makes the maintenance of Congress's legislative power, its ability to define and control public policy, so critical. In short, he understands, as many political scientists and lawyers do not, why Congress is and must be the linchpin of American democracy.

It is these understandings, combined with his factual and legal knowledge, that give the author's critique of delegation its bite. His trenchant analysis of the irresponsible and ineffective results that flow from unconstrained delegations of regulatory discretion rests not only on the limitations of federal regulation as a policy tool, but also on the advantages special interests derived from legislative abrogation of deliberative and representative responsibilities. The argument thus rests as much on a normative theory of politics as on an economically informed analysis of consequences. Similarly, the author's persuasive critique of the illogic

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of the past half-century of Supreme Court rulings on delegation, the Court's timorousness in facing this issue, and the Court's need and ability to alter its stance rest on a view of proper institutional roles within the framework of the Constitution as well as on a wise and innovative analysis of consequences and opportunities.

Still, the strengths and importance of this book do not mean it is without flaws. Two are especially noteworthy. The author's claim that his proposed standard for delineating legislative power establishes a difference in kind rather than in degree is not convincing. Given the pervasiveness of discretion, a legislative rule that constrains subsequent action cannot transform administrative decision making into "interpretation." Except at some absolute extreme, judgment of whether legislation provides a meaningful constraining rule must remain a matter of degree. Although this fact may well pose difficulties in persuading the Court to alter its permissive stance on delegation, the author has no choice but to rely on other quite valid arguments he brings to bear—that difficulties in judgment do not absolve the Court of its responsibilities or consign it to willfulness and that the Court can and should exercise broad power when the protection of basic constitutional processes are at issue.

More serious problems arise from the author's reliance on rational choice theory to explain the fundamentals of legislative behavior and the growth of delegation in the twentieth century. The desire of members to maximize personal power through blame avoidance and credit seeking cannot by itself explain the growth of delegation. Even if the role of such motives is not questioned, it is difficult to understand why it took members more than a century to rely on a strategy that is ostensibly so favorable to their sovereign desires. Clearly, contextual factors such as the character and demands of the workload, the doctrines of the reigning public philosophies, and the strength of party as a force for collective accountability are equally, if not more, important. Delegation and regulation, in short, are not wholly or even predominantly the products of a conspiracy to promote the personal self-interest of legislators. Moreover, members who are not animated by shared and broad policy commitments but rather put a premium on posturing and the distribution benefits are not the type of members James Madison and the Framers had in mind and cannot serve as instruments of their purpose.

Those who affirm the Framers' ideals thus must be careful about how they apply the insights of rational choice. For this is an approach that believes theoretical rigor requires reliance on a simplifying assumption that is blind both to the moral sense of the Framers and to their understanding of the broader dimensions of human nature and representative government. In this case, the author is not sufficiently attentive to the ways in which the normative and empirical overlap. He seems not to realize that the world of grasping and particularistic politics he accepts as controlling may rule out the very possibility of a Madisonian legislature that serves "the permanent and aggregate interests of the community." The result

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is to undermine what is otherwise a persuasive case, both prescriptively and practically, for protecting and enhancing Congress's lawmaking power.

JOSEPH COOPER
The Johns Hopkins University

The Presidential Pulse of Congressional Elections *by James E. Campbell. Lexington, University Press of Kentucky, 1993. 273 pp. $36.*

On 8 November 1994, the president's party lost seats in the House for the thirty-third time in thirty-four midterm elections, dating back to 1862. This pattern, one of the few "lawlike" regularities in American politics, has important policy implications: the president's agenda will have a more difficult time making it through Congress, especially when the opposing party gains control of one or both of the houses of Congress. The Republican landslide, in which Republicans picked up fifty-four seats in the House (pending a few recounts) and nine seats in the Senate (ten including Richard Shelby, who switched parties), while suffering no incumbent defeats, is clearly going to make life more difficult for President Bill Clinton.

While the empirical regularity and policy consequences of midterm losses for the president's party are obvious, many competing explanations for the phenomenon have emerged in the past thirty years. James Campbell has provided a comprehensive overview and synthesis of these conflicting claims. Campbell established a middle ground between the "surge and decline" and "referendum" theories, showing that both theories are right to some extent and are primarily wrong for ignoring each other. Unfortunately, none of the theories are able to explain the magnitude of Republican gains in 1994. The various models in this book predict a loss of between seventeen and thirty-five Democratic seats, clearly placing the 1994 midterms in the "outlier" category. The "presidential pulse" theory is not especially compelling for 1994, because President Clinton's 1992 victory was in the "narrow to moderate" range, which would lead to the expectation of relatively small losses in the subsequent midterm (the median seat loss for the president's party for this type of midterm between 1902–1990 was a 19.5 seats; Table 3.1, p. 39). However, all theories have their outliers; furthermore, none of the competing referendum models fare any better in explaining the 1994 elections. The strong economy and moderately low presidential popularity produced expected Democratic losses in the 15–25 seat range.

Despite his inability to explain the 1994 elections, Campbell makes a compelling case for his revised, synthetic theory with a masterful use of a vast array of evidence. The first four chapters provide an excellent review of the vast literature on midterm elections (readers who are familiar with this literature may skim

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these chapters). Chapter 1 provides a brief overview of the historical evidence, the various theories of presidential losses in midterm elections, and the new theory presented by the author. Chapters 2 and 3 test the surge and decline theory of midterm losses with evidence at the national, district, and individual levels. Consistent with previous work, Campbell finds the national and district-level evidence generally support the theory, while individual-level data are less supportive. Chapter 4 examines the various competing referenda theories of midterm losses (negative voting, strategic politicians, party competence, exposure, and lagged referendum).

Chapters 5–8 provide Campbell's analysis of his revised theory of presidential and House elections. His central argument, which is largely supported, is that a complete understanding of midterm elections must encompass both short-term and presidential forces. Referendum theories are incomplete, because they largely ignore the impact of the previous election, while the surge and decline theory misrepresents the impact of partisanship on turnout and neglects to consider the cross-pressures created by short-term forces. His revised theory argues the president's party loses votes and seats in the midterm in proportion to the previous presidential vote. The individual-level explanations for this pattern must consider the impact of the partisan slant of information surges in presidential and midterm elections on the decisions of partisan and independent voters to vote for the president's party, defect, or not vote.

Chapter 9 presents some interesting data on sub-presidential elections (U.S. Senate and state Houses) and a fascinating discussion of "wasted coattails." The final chapter addresses the broader implication of the work, relating it to the divided government and presidential influence in Congress literatures and addressing questions of democratic accountability and the vitality of parties. While recognizing the limitations of the recommendation, Campbell concludes by calling for the elimination of midterm elections.

My only significant quibble with the book is its unconvincing discussion and tests of the "strategic politicians" hypothesis first put forward by Gary Jacobson and Samuel Kernell in 1981. The claim that the pool of strong challengers will be depleted in presidential years when the winning party has favorable short-term forces, thus weakening the pool of viable candidates for the midterm, is not consistent with other district-level studies. Nearly all districts have a pool of potential challengers that could emerge in any given election if the short-term forces are favorable. The presidential pulse is probably not strong enough to influence these strategic calculations in midterm elections. A more direct test of the claim should have been provided.

This book is a worthy capstone to the literature on presidential losses in midterm elections. Though constructing the theoretical basis for knowledge and testing it with the best available data is never complete, Campbell's book is likely to remain the benchmark for future research on this topic for many years.

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The Homeless *by Christopher Jencks. Cambridge, MA, Harvard University Press, 1994. 173 pp. $17.95.*

Perhaps the most outstanding aspect of Christopher Jencks's book is its attempt to dissect current discussions on homelessness and distinguish rhetoric from fact. In his explanation of the homeless phenomenon, Jencks challenges contemporary wisdom with regard to the definition, the size, and the root causes of homelessness in America. Jencks's analysis of the scope and the magnitude of this problem provides an important service, because it makes evident the great misinformation and contradictions presently surrounding this issue. However, this book also serves as an indication of the limits of existing data; if we are to find solutions to the devastating problem of homelessness, we must begin to add to our collection of data and our factual knowledge.

Jencks begins by noting that over the years advocates and journalists have made various claims as to the number of homeless people in this country, with estimates from as low as 200,000 to as high as 3 million. Although several social scientists, including statisticians for the 1990 U.S. Census Bureau, have attempted to get a more precise figure, gaps and inconsistencies still remain. Jencks wades through the voluminous and often contradictory data and concludes that the magnitude of the problem has for the most part, been vastly overstated. He derives this conclusion by redefining homelessness to include only those families or individuals who are living in shelters—thus excluding the tens of thousands of Americans who are living doubled-up or who choose the streets and parks over shelters. Using this definition, Jencks concludes that there are really only between 200,000 and 500,000 homeless people in America. These figures are significantly lower than most others, including those specified in President Bill Clinton's much heralded and recently released Housing and Urban Development report on homelessness.

After establishing the parameters of this issue, Jencks attempts to identify the causes of homelessness. His discussion rehashes the much debated issue of deinstitutionalization—the policy of discharging former mental patients from hospitals into communities (he attributes 25 percent of the single homeless population to this cause). Jencks then turns to the other commonly cited causes of homelessness—neighborhood gentrification, unemployment, the increase in single motherhood, substance abuse. Although he discusses the impact of each of these issues, he stops short of quantifying the role that each of these factors may have played in the growth of homelessness. While each of these variables certainly plays a role, they do not adequately explain the incredible growth in family homelessness—the fastest growing segment of the homeless population. Primary data reveal that this population explosion is driven by two specific factors: the increasing number of teenage mothers whose families, already on welfare, cannot continue to support them and their children; and the increasing number of young people who are "aging out" of the foster care system with nowhere to go other than the street or a shelter.

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Finally, Jencks realizes—as so many others before him have not—that "housing programs cannot solve most of the problems afflicting the homeless" (p. 121). This conclusion is supported by the quantitative data that show that children represent the largest segment of the homeless population in America. They come from families who lack basic independent living skills, are often plagued by domestic violence, and are headed by young mothers with low literacy levels and virtually no work experience—mothers who need to be job readied before they can even be job trained. The single homeless population has also gotten significantly younger and more hardened; they are no longer the aged skid row bums of a decade ago. This is the new American poverty: a severe and chronic affliction the likes of which has not been witnessed in America since the 1930s Great Depression. And homelessness has become simply one more facet of being poor in the 1990s. Thus Jencks is correct in the broad sense that homelessness is not simply a housing issue.

In the end, Jencks has succeeded in providing the reader with a clearer understanding of homelessness. But this short discourse of just over 120 pages demonstrates the essential need for additional, more rigorous and scientific analysis. With more quantitative research we will be able to better comprehend the magnitude and root causes of this devastating issue, which will provide material necessary to more fully report on this subject.

RALPH DA COSTA NUNEZ
Homes for the Homeless

The Confirmation Mess: Cleaning Up the Federal Appointments Process *by Stephen L. Carter. New York, Basic Books, 1994. 252 pp. $21.00.*

This marvelous monograph chronicles how the politics of federal appointments went awry and why it will be hard to set aright. Every reader will learn from Carter's accessible analyses of problems and deft critique of proposals. Every library, individual and institutional, will be adorned by this timely, pithy volume.

From recent nominations, Carter distills a systemic logic that often messes up confirmations. A presumption in favor of confirming presidents' appointments had, until the Warren Court, made a paucity of qualifications or distinctions insufficient to thwart confirmation in the Senate. Inoffensive mediocrity sufficed through most of this century. This deference to presidents could be overcome only if minor flaws, petty indiscretions, or inconsequential misjudgments were magnified into debilitating disqualifications, as was the case with Judge John Parker in 1930. Efforts to accentuate negatives in the 1950s and early 1960s impressed only senators protesting desegregation and other specters of liberalism and communism. However, innovations in imagery, adaptations from electioneering, and the presence of television enabled senators and interest groups to

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drive negatives up outside the Senate to pressure decision makers inside the Senate. The "outside politics" of electronic slanders soon overwhelmed the "inside politics" that had shielded the process from much of the basest hyperbole and mendacity. The new outside politics could not deny Justice Thurgood Marshall but doomed Justice Abraham Fortas and Judge Clement Haynesworth's appointments to the Supreme Court.

Accentuation of negatives—called "borking" since the 1987 Senate confirmation hearings of Robert Bork failed to elevate him to the Supreme Court—accelerated as judicial activism raised the stakes of appointments and as litmus tests politicized appointments, Carter argues. Borking spread even to administrative appointments. To survive on the inside when trouble brewed outside, nominees had to duck, dance, and dissemble. Thus, borking debased nominees as well as the process.

Carter handles evidence meticulously and dispassionately. He surprises readers by recounting the racist, albeit ineffective, borking of Justice Marshall, then shames them with the demagogy and distortions that strangled Judge Robert Bork's nomination. He skewers reporters for withholding facts that would have obstructed the high-tech lynchings of Zoë Baird and Lani Guinier. This book succeeds in forcing readers to acknowledge the confirmation meanness that has engulfed the nation.

Carter goes that success two better. First, he reviews the politics of disqualification to show why and when minor improprieties or trivial misdemeanors might be remediable if borking were overcome. Then he shows why recent proposals will not stop borking, because they fail to end its fun and profit. Carter concludes that the confirmation mess will persist as long as the stakes of appointments remain high, personnel decisions are politicized and ideologized, and lobbyists prefer winning to decency.

While readers eager for quick fixes will not enjoy Carter's elegant debunking of panaceas, they will be hard pressed to overcome his inexorable logic. Still, even as Carter looses that logic on the reading public, the law of anticipated reactions may ameliorate the confirmation mess. Borking has so greatly altered confirmation politics that nominations without thorough vetting and extensive consultation may have become far too risky. Stealth candidates (Justice David Souter) and inoffensive nominees of unquestioned distinction (Justice Stephen Breyer) may drive borkers left and right out of business. That might deprive journalists of the ratings bonanza in trashing reputations and enervating presidencies. Then Lani Guinier and John Tower need not have been spurned in vain.

WILLIAM HALTOM
University of Puget Sound

The Presidency in a Separated System *by Charles O. Jones. Washington, DC, Brookings Institution, 1994. 338 pp. Cloth, $39.95; paper, $16.95.*

"The President is not the presidency. The presidency is not the government. Ours is not a presidential system." With these words, Charles O. Jones begins his

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book, indicates his perspective, and lays the foundation for his thesis—that the presidency exists and operates within a system of separated institutions competing for shared powers.

Jones intends his perspective and the thesis that follows from it to be a corrective to the presidency-centered, responsible party model that has been used by contemporary practitioners and pundits to evaluate presidential and governmental performance. Although Jones, a past president of the American Political Science Association, exempts most of his fellow travelers from the hoards of wrong-thinking activists and analysts who cling to this misguided and unsubstantiated view of government and the president's role in it (p. xii), he is clearly criticizing the orientation of the presidency literature, which he believes is too narrowly focused on the president or presidency. It is too limited in its time frame, usually to a single administration, and too results-oriented, often preoccupied with concrete measurements of performance that lend themselves to quantitative analysis. Jones's methodological admonition is clear: conclusions drawn from number crunching rarely reflect, much less appreciate, the nuances of governing.

But Jones does not stop here. He also rails against the normative assumptions on which much contemporary analysis is predicated: that presidents should always be activists in agenda setting, coalition building, and influence peddling; that they should be held accountable for policy outcomes that occur during their times in office; and that any personal, partisan, or institutional impediments to their leadership should be overcome, and if these constraints persist, they should be corrected by systemic change. Thus, Jones also takes on his liberal-leaning, frequently Democratic, reform-oriented colleagues, who profess impatience and concern with institutional checks and balances, divided responsibility, and diffused power.

Throughout the book there is extensive citation and discussion of the scholarly literature. Jones builds on this literature, particularly David Mayhew's study of lawmaking from 1946 to 1990, with his own examination of presidential-congressional interactions on twenty-eight laws enacted during this period. He also incorporates some of his previously published research on agendas, presidential legislative styles, and presidential-congressional relationships from Richard Nixon to George Bush.

The book moves from presidents to the presidency to the public arena to the policy-making process. Its primary focus is on lawmaking, the legislative relationship between Congress and the presidency. A short chapter, "Thinking About Change," concludes the book. This chapter can be short because Jones is not a reformer, believes that the system adapts continuously (and more or less satisfactorily), and is leery of reforms and reformers.

So what does Jones suggest? For presidents, get on with the business of governing. Do what you can. Be aware of your limits. Assess your political capital carefully. Designate agenda items, but be careful not to act as if you had a clearly defined, electoral mandate; adapt to the "continuous, orderly, iterative, and

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partisan" legislative progress, but be careful not to assume that you can control the inputs to or the outputs from that process; adapt strategies that seem appropriate to the times and the political environment in which law making occurs but not those which assume presidential dominance or demand presidential responsibility for all or most results.

For those of us who study and evaluate the presidency and the system in which it operates, Jones urges us to broaden our perspective and get the big picture. Snapshots in time and space can be misleading. Be aware of nuance. Be cautious about utilizing a methodology that may yield precise measurements at the expense of a much more complex reality. Be flexible when adopting a time frame to assess performance, judge efficacy, and evaluate change. And balance the policy, political, and institutional frustrations of the moment with the concrete achievements of the system over the years. It does work.

The contribution of this book clearly lies in the framework it presents, the debate that framework engenders, and the challenge that it presents to practitioners motivated by partisan and media goals. At one time or another, most students of American government will have to grapple with the arguments Charles Jones presents in this very important, provocative work.

STEPHEN J. WAYNE
Georgetown University

Rhetorical Republic: Governing Representations in American Politics *edited by Frederick M. Dolan and Thomas L. Dumm. Amherst, The University of Massachusetts Press, 1993. 296 pp. Cloth, $40.00; paper, $16.95.*

Does mainstream political science research miss the essence of politics? The editors of this collection of essays believe it does. They contend that the struggle over controlling the images of politics that pervades the public spheres of America has become the most important political battle, because the outcome determines the course that American politics will take. Yet the theories that guide most current political science research and the research designs they generate are ill suited for studying political discourses, imagery, and interpretations. What is needed is a more interpretive, interdisciplinary approach that captures the real essence of the political world that Americans create with words and experience in their minds.

The editors represent the field of rhetoric, which is the disciplinary home of Frederick M. Dolan, who teaches at the University of California, Berkeley, and political science, which is the intellectual home of Thomas L. Dumm, who teaches at Amherst College. But the team of contributors is not particularly interdisciplinary. It is loaded with political scientists, most of them specializing in political theory, but with a strong emphasis on political rhetoric in their research. There

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is only a sprinkling of outsiders, who range from economics to rhetorical and literary studies.

The choice of essays seems eclectic, with no particular reason given why the images that are explored in the book deserve attention while other images are ignored. Out of the total of twelve essays, five are grouped under the heading "Cold Wars." Here one finds essays by Avital Ronell, David Campbell, Larry N. George, Diane Rubenstein, and a team effort by James Der Derian and Kiaran Honderich, who deal with the political and cultural economy of Narcoterror. The other essays focus on such topics as the meaning of Operation Desert Storm, analyzed from a psychoanalytic perspective; the relationship between the idea of cold wars and the creation and re-creation of American identity; and the ideological reconstitution produced by hot wars that can serve as a form of political catharsis. The contemporary examples discussed in this book are the U.S. interventions in Panama and the Persian Gulf. The most unusual chapter in the cold war section is Diane Rubenstein's analysis of the Iran-contra affair, intriguingly titled "Oliver North and the Lying Nose." Figures of speech that refer to body parts are interpreted as evidence that deception was the game in that political episode.

Part Two of *Rhetorical Republic* is labeled "American Alternatives" and contains essays by Anne Norton, William Chaloupka, John C. Dolan, and Stuart Alan Clarke. The essays explore the significance of public discourse in alternative public spheres, such as the discourse about the nature and role of African-Americans and of women in a society that denies them the full rights of citizenship and the unique political messages that emanate from street demonstrations and from the poetry of protest in a world dominated by far less expressive mass media discourse.

In the final section, titled "Democratic Vistas," William E. Connolly, Bonnie Honig, and Dana R. Villa discuss the problems facing the nation as it grapples with the construction of viable political rhetorics. The essays range from a discussion of Hannah Arendt's and Jacques Derrida's ideas about the founding of the American Republic to an exploration of ways to diminish the dangers of overly tight bonds of territoriality to an analysis of postmodern critiques of public sphere theory.

As is true for most collections, the quality of the essays varies, particularly with respect to the clarity of writing. Many will make sense to general audiences, while the jargon used in others makes them unintelligible to the general reader. Overall, the essays contain many provocative ideas that should provide food for thought for advanced undergraduate and graduate-level political science students. The views represented in the book deserve a hearing, because they challenge many concepts dear to mainstream political scientists. Just as Thomas Jefferson hailed the benefits of periodic revolutions, so the academy needs to be shaken up periodically to prevent intellectual rigor mortis.

DORIS A. GRABER
University of Illinois at Chicago

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Crusaders in the Courts: How a Dedicated Band of Lawyers Fought for the Civil Rights Revolution *by Jack Greenberg. New York, Basic Books, 1944. 634 pp. $30.00.*

Greenberg, who earlier was director-counsel of the NAACP Legal Defense and Educational Fund (LDF) longer than any other person, including Thurgood Marshall, has written in one book his memoirs, a history of LDF, a review of the development of civil rights law, and an *apologia pro sua vita*. Except for a clumsy prologue and closing chapters which read like a report, the book is exciting reading, full of intellectual battles and often terror.

The volume is also highly personal. The author on the whole admires the talents and accomplishments of his staff and colleagues, not only while they were with LDF but in their later life as well. One cannot agree with his evaluation of his competitor for director-counsel, Robert L. Carter, nor his judgment that Ben Chavis would be an admirable executive secretary of the NAACP. The author does not spare opponents: southern judges, sheriffs and governors, the NAACP – when it sought to make LDF drop the initials NAACP from its title – the National Lawyers Guild, the Reagan administration, the Anti-Defamation League, and his staff when they wished to defend Angela Davis and cohorts.

The LDF charge against disfranchisement, segregation, and discrimination begins with *Smith v. Allwright* (1944) which barred the white primary. *Brown v. Topeka*, however, was the case that started the great civil rights movement in America. It challenged segregation in elementary and secondary education in five cases throughout the nation, all known by the title of the leading case, *Brown*. The Delaware case was argued by the author. Pursuant to *Brown*, the Court, most often in LDF cases, found all state-sponsored segregation unconstitutional. *Brown* released civil rights activists, black and white. The civil rights revolution began.

LDF hoped to win *Brown* on the basis of the law that it had developed in its higher education cases, *McLaurin* and *Sweatt*. But the Court posed five questions for reargument, two of which dealt with the intent as to segregation in education of the Congress that proposed the Fourteenth Amendment and the states ratifying it. Marshall asked me to assess what could be shown and to recruit scholars in constitutional law and history, and education to do the job. The LDF lawyers were apprehensive. Two refused to answer the Court's questions. The Court decided that history gave no clear answer to its questions. It decided *Brown* on the law developed in the higher education cases except that "deliberate speed" was to be allowed in desegregating. Greenberg still has reservations about the historical argument Marshall assigned to Spottswood Robinson for briefing and argument.

After *Brown*, southern opposition erupted. Southern members of Congress issued the Southern Manifesto declaring massive resistance. Interposition was generally practiced in southern states and nullification in Mansfield, Texas and Little Rock. President Dwight Eisenhower's federal troops and the Court in

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Cooper v. Aron put an end to nullification in Little Rock, Arkansas. *Reynold's v. Sims* and the voting rights acts changed rural and racist domination of southern state politics.

Greenberg became director-counsel of LDF in 1961, and thereafter LDF was able to win cases before the Court forbidding the various state measures to defeat or delay the establishment of unitary school districts. It won the right to bus within school districts but not between districts. It finished integration in southern state universities. Greenberg and his staff became the lawyers for Martin Luther King, the Student Non-Violent Coordinating Committee (SNCC) and the Committee of Federated Organizations (CCFC), literally freeing hundreds from southern jails. The civil rights acts of the 1960s opened new areas for LDF, and it won significant cases in job discrimination and affirmative action in education and employment. It also fought the death penalty.

Ironically, while LDF was remedying old wrongs, in agriculture, federal policy and the biotechnical revolution pushed the black peasant off the land. He migrated to the great cities, arriving when step-stone jobs were being exported to Asia. Black unemployment among youths skyrocketed. The federal government offered only aid to mothers of dependent children. Social pathology was on its way. LDF's pursuit of integration in education in central cities became a costly failure. The Full Employment Act was ignored. The present writer, a civil rights activist all of his life, gave up such work in resignation before the inevitable.

To those who would scoff at what the civil rights revolution did not achieve, Greenberg points out in detail what it was like to be black in America. The lawyers won their goals—no more legal segregation, discrimination, and disfranchisement.

JOHN A. DAVIS
The City University of New York

A Rage to Punish: The Unintended Consequences of Mandatory Sentencing *by Lois G. Forer. New York, W. W. Norton, 1994. 204 pp. $23.00.*

Between 1960 and 1992, America's violent crime rate quintupled. Its property crime rate nearly tripled. From 1960 to 1980 the imprisonment rate relative to the number of violent crimes committed fell by 69 percent. In the 1980s, the nation's prison population grew by leaps and bounds, but its population of community-based felons grew even faster.

Thus, today there are some five million persons under correctional supervision in America, nearly three-quarters of them on probation or parole rather than behind bars. In 1991, fully 94 percent of state prison inmates had been convicted as adults of a violent crime or had a previous sentence to probation or incarceration. In New Jersey, prisoners had an average of nine prior arrests and six prior

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convictions. Nationally, prisoners convicted of a violent crime served barely 40 percent of their time in confinement.

Community-based convicted criminals commit millions of crimes each year. Some 35 percent of violent crime arrestees are on probation, parole, or pretrial release at the time of their arrest. A study by Florida law enforcement analysts found that between 1987 and 1991, Florida parolees committed over 25,000 new crimes, including over 4,600 new crimes of violence and at least 346 murders. Nationally, only one-fifth of probationers who violate the terms of their sentences go to jail.

None of these statistics appear in the book under review here. Its author, the late Judge Lois G. Forer, served for sixteen years as a trial court judge in Philadelphia. As the book's title makes plain, she believed that mandatory sentencing reflected the American public's "rage to punish." Many of her anecdotes support that view, including the one about how her refusal to impose a mandatory five-year sentence on a small-time thief led her to quit the bench. And the passion with which she makes her case against mandatory penalties, inhumane prison conditions, and capital punishment is moving.

But little of the empirical evidence supports Forer's provocative thesis. Instead, the data indicate that mandatory sentencing laws were feeble efforts to end revolving-door justice and keep violent and repeat criminals from preying upon law-abiding citizens. In most jurisdictions, the mandatory sentencing laws had no bite. Years after they were enacted, most prisoners continued to serve well under half of their sentences in confinement.

The one huge exception is mandatory drug penalties. Virtually every state has a much higher fraction of drug offenders behind bars today than it did a decade ago. Forer suggests that the vast majority of imprisoned drug offenders are first-time, petty, nonviolent criminals. In fact, even under the much-criticized federal sentencing guidelines, in 1991, only 2 percent, or about 700, of the 35,000 persons newly committed to federal prisons were convicted of mere drug possession.

Still, one could make a credible attack on mandatory drug laws. A number of studies reveal that the typical prisoner in the year prior to incarceration commits a median of a dozen crimes, excluding all drug crimes. But the very same studies also reveal that somewhere between 10 and 20 percent of prisoners may well be low-level offenders, most of whose criminal careers have centered on small-time, nonviolent drug crimes.

Unfortunately, Forer cites some of these studies but is too quick to dismiss them with glib assertions such as "I have seen several thousand offenders. I can only wonder who is a 'typical' offender and what is an 'average' cost to the victim and society" (p. 147).

Forer follows the journalistic wisdom that get-tough penal policies reflect popular pressures. But the interesting and unexplained political reality here is actually one of opinion-policy incongruence: how have policy makers, judges,

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and administrators been able to defy for so long what solid majorities of every demographic description have wanted in the way of crime policy?

Part of the answer is that forceful, credible opponents of mandatory sentences like the late Judge Forer, in conjunction with other anti-incarceration policy entrepreneurs and organizations, have had far more influence over both the formulation and the implementation of sentencing policies than is generally acknowledged, including by themselves.

JOHN J. DIIULIO, JR.
Princeton University and Brookings Institution

Certain Trumpets: The Call of Leaders *by Gary Wills. New York, Simon and Schuster, 1994. 336 pp. $23.00.*

I have come to praise Gary Wills, not to bury him. Quite simply, he is one of the most remarkable writers in America. Not only has he penned many books of particular interest and import to readers of this journal—most recently the outstanding and original *Lincoln at Gettysburg*. He has also applied his prodigious gifts to ostensibly unrelated areas of inquiry such as religion, literature, and art. This is a man whose great industry and protean intellect apparently know no bounds and whose body of work already represents—even though he is only in midlife—a major contribution.

Certain Trumpets, however, is a lapse. Neither particularly well written nor especially illuminating, this book appears to be a kind of throw-away for Wills, something assembled when he was only half thinking about a subject that deserves better.

The introduction warns of the weak work to come. It is unfocused, uninformative, and sometimes downright misleading. Scholars have in fact moved well beyond the "two unacceptable alternatives" Wills claims the literature offers: "the leader who dictates to others, or the one who truckles to them" (p. 12). And none of the decent work on leadership is guilty as charged on the subject of followers—generally characterized, according to Wills, as "a hazy and not very estimable lot, people to be dominated or served, mesmerized or flattered" (p. 13). Moreover, while Wills insists in his introduction that it is followers who have the crucial role and that his readers should keep this in mind, he proceeds for the duration to do what the rest of the pack has done: focus on leaders.

Certain Trumpets has sixteen chapters, each describing a man or women who exemplified a particular leadership type. According to Wills the leadership types are: electoral, radical, reform, diplomatic, military, charismatic, business, traditional, constitutional, intellectual, church, sports, artistic, rhetorical, opportunistic, and saintly. For each of these categories, Wills also presents an "antitype,"

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defined as "one who exemplifies the same characteristics by contrast" (p. 20). Thus the ill-fated CEO of General Motors, Roger Smith, is offered as the antitype to Ross Perot whose marketing leadership is supposedly "made clearer by considering its lack in Smith" (p. 20). And so on.

The problem is that the chapters skip over time and space and deed like a flat rock over still water. We never get to delve even a smidgen below the surface. Imagine informing about charismatic leadership generally in four and a half pages, about the charismatic leadership of King David in particular in six more pages, and about the antitype to David, Solomon, in two concluding pages. We are left with no more than a hint of who David was and with virtually no information at all about how, literally, David's charismatic leadership was exercised. Similarly, while a few in the cast such as Mary Baker Eddy (church leadership) have the virtue of being relatively unfamiliar, most of the others – for example, Franklin Roosevelt (electoral leadership), Eleanor Roosevelt (reform leadership), George Washington (constitutional leadership), Martin Luther King, Jr. (rhetorical leadership), and Napoleon (military leadership) – are very well known quantities.

Wills being Wills is incapable of being misguided all of the time. Here and there *Certain Trumpets* contains a nugget. The fleeting discussion on who in fact CEOs lead (workers? board? customers? immediate advisers?) is provocative. But it's too little and too late. Those who want Wills on leadership should skip this book and turn instead to his other work, some of which happens to be wonderful on just this subject.

BARBARA KELLERMAN
SmartDecisions

The New York Idea: An Experiment in Democracy *by Mario Cuomo. New York, Crown Publishers, 1994. 286 pp. $25.00.*

The passage of time often serves as a harbinger for change in political fortunes. In the dozen years since becoming New York's governor, Mario Cuomo has been transformed from biographer Robert S. McElvaine's 1988 assessment that he is a veritable president in waiting to the 1994 evaluation expressed by surprising numbers of voters who proclaimed their support for ABC – Anyone But Cuomo."

On the eve of his quest for a fourth term, Cuomo wrote this upbeat ode to New York as a laboratory of democracy. What could have degenerated into maudlin, self-serving boosterism has instead emerged as a literate expression of practical idealism. He perceives government as a catalyst for energizing private sector growth, which helps pay for enlightened public policies. He believes that New Yorkers have been remiss in allowing achievements to be overlooked and permitting the media to exploit negative images.

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The governor divides his book into major sections that are illustrative of his philosophy: Freedom, Work, Justice, Beauty and Hope. The themes are vintage Cuomo. There is the oft-told tale of the immigrants' son who learned family values regarding children, the elderly, the poor, and the powerless. He views the work ethic as glue that held neighborhoods together. He advocates public-private partnerships for infrastructure rebuilding and high tech opportunities for which a new generation of students must be trained. He makes a strong case for affordable housing, accessible health care, and dependable community-based services for vulnerable groups. He seeks an environment in which the state will be kept clean and green.

The least satisfying parts are three appendices. The first is a sketchy overview of New York's regions. This is followed by a bare listing of National Firsts during his tenure in office. Then there are All-Time Firsts covering three centuries of potpourri that include major milestones such as the Seneca Falls Conference on Women to trivia such as Binghamton's role in the oleomargarine patent and Jamestown's contribution as the birthplace of Lucille Ball.

Any book written by Mario Cuomo should illuminate intergovernmental politics. He dissects the adverse effects of the New Federalism and supply side economics on working people who raised their families in the wake of diminishing jobs, escalating health needs, rising college costs, and spiraling national debt. Echoing the Patrick Moynihan thesis, he documents the manner in which New Yorkers pay disproportionally large national taxes yet receive inadequate shares of federal funds. He dismisses the vaunted Reagan–Bush promises of greater flexibility to the states as a subterfuge for reducing national assistance for federally mandated programs.

Political scientists might have expected a more balanced analysis of executive-legislative relations in Albany. Unfortunately, the author leaves the impression that the most successful advances in the Empire State are inspired by the governor and his agencies. Failures are attributable to legislative intransigence. He is correct in focusing on the way that majority parties in the legislature have refused to grant public access to the details of their own budgets. He insists that special interest lobbyists sway legislators by making campaign contributions but fails to acknowledge that his own reelection coffers include contributions from the same sources. He insists that people are fed up with a system that discourages challenges to incumbents through arcane election laws, but overlooks the fact that his own aides pushed off the ballot a nettlesome businessman who sought to challenge Cuomo's choice for lieutenant governor. He declares that voters want to oust most incumbents but never imagined that his own quest for reelection would be met with a similar response. In the words of the cartoon character who looked in the mirror, "I have seen the enemy, and it is us."

LEONARD P. STAVISKY
New York State Senate

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The Politics of Redistributing Urban Aid *by Douglas J. Watson, John G. Heilman, and Robert S. Montjoy. Westport, CT, Praeger, 1994. 160 pp. $49.95.*

The Urban Development Action Grant (UDAG) program was the centerpiece of President Jimmy Carter's comprehensive national urban policy. Under UDAG, the federal government provided grants to eligible distressed communities on a competitive basis to leverage private investment for a variety of development projects, which in turn, it was hoped, would help the nation's most hard pressed central cities cope with the problems of disinvestment and employment and population decline. During the Reagan years, the UDAG program came under heavy fire as Ronald Reagan proposed to terminate the program in each of his budgets. In the end, however, it was Congress, not the Reagan administration, that terminated the UDAG program. Faced with a showdown in the fiscal 1989 budget between funding a space station for NASA and continuing UDAG, Congress opted for the space station. Overall, the UDAG program awarded $4.6 billion in federal funds to assist about 3,000 local development projects in more than 1,200 communities during its twelve years of operation (1978–1989).

This book examines the fate of the UDAG program in order to determine whether or not the federal government can target its resources to the nation's neediest cities. Using aggregate data on UDAG project funding outcomes obtained from the U.S. Department of Housing and Urban Development, the authors demonstrate that "UDAG died because of political controversy generated by its partly apparent and partly real success in targeting funds to cities in need" (p. 7). In short, the authors argue that UDAG was terminated because it failed to distribute funds broadly enough to sustain a congressional coalition capable of maintaining support for the program.

While the authors provide a nice description of the UDAG program's structural features and demonstrate how the program's eligibility and allocation features influenced funding patterns, their arguments about the fate of redistributive programs in general and UDAG in particular could have been strengthened had they devoted more attention to fleshing out the details of the political controversy surrounding the program and congressional attempts to "reform" UDAG. For instance, the authors devote only a couple of paragraphs to the 1987 amendments to the UDAG program that revised the allocation process in an attempt to broaden the distribution of funded projects to cities in the South and the West that had been shortchanged by the then existing point system used to rank projects. This period was a critical turning point in the program's history. Yet the authors do not fully capture the character of the debate concerning UDAG nor who was responsible for the changes that did occur.

In addition, the authors could have devoted more attention to the larger political and fiscal context within which federal programs operate. In this case, UDAG was a high profile program created in a Democratic administration that was under attack in the popular press, in the halls of Congress, and within the Reagan administration as a program gone awry with its penchant for funding projects

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that included luxury hotels, festival marketplaces, and high-priced waterfront condominiums. Thus, the fact that UDAG assistance was predominantly concentrated in a small number of communities in the Northeast and Midwest is only part of the explanation for the program's loss of support. Equally important was the fact that many legislators were not convinced that the funds were being awarded for an appropriate use that warranted targeted federal assistance. That is, while UDAG may have done an exemplary job at targeting assistance to needy places, many legislators were not convinced that UDAG was doing an effective job at targeting assistance to needy people. That, combined with the increasing fiscal pressure being exerted on domestic programs because of a rapidly rising federal budget deficit, spelled doom for UDAG.

In summary, the authors provide us with a case history of one of the federal government's most important place-oriented redistributive programs. Though portions of the analysis are somewhat undeveloped, those interested in federal redistributive programs and urban policy should still find the book useful and relevant to their work.

MICHAEL J. RICH
Emory University

Molotov Remembers: Inside Kremlin Politics, Conversations with Felix Chuev
edited by Albert Resis. Chicago, Ivan R. Dee, Inc., 1993. 464 pp. $29.95.

The end of Communist party rule in the former Soviet Union and the seemingly insatiable appetite of Western audiences have produced a steady stream of publications that purport to be insider accounts from the inner sanctum of power in the Kremlin. To date, only a handful of reputable historians have written works based on the newly available archives; for the most part, these books have not significantly altered our previous impressions of Soviet politics at the top. Furthermore, because the Presidential Archive still remains largely off limits to any but the few fortunate enough to be hand picked by retired General Dmitry Volkogonov (the recent biographer of Lenin, Trotsky, and Stalin), some of the most sensitive materials have not made their way into the scholarly literature. To respond nonetheless to the perceived curiosity of post-Soviet and Western readers, a considerable body of material is being published by nonhistorians, focusing predictably on the more sensationalist side of Soviet politics – the terror and secret police. *Molotov Remembers*, which spans the entire political career of Viacheslav Molotov (1890–1986), one of Stalin's closest advisers and former Soviet head of state and foreign minister, is one of the latest entries in this problematic literature.

Until recently, the only major insider's account available to scholars was the memoirs of former head of state and party, Nikita Khrushchev; these memoirs

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were the product of a collaboration with Khrushchev's son over several years of taping conversations with his father. The three volumes that have appeared in English remain the best published source for the period. (Svetlana Alliluyeva, Stalin's daughter, also published two small volumes of memoirs and letters, but they have been less well received by scholars.) The book under review is related to *Khrushchev Remembers* in at least two ways; first, the Russian editor Felix Chuev recorded his conversations with Molotov over several years, much as Khrushchev himself did; secondly, Molotov targets Khrushchev's memoirs and political career as the primary foil of his own work. Molotov was stripped of his major posts and later expelled from the Communist party for opposing Khrushchev; not surprisingly, Molotov accuses Khrushchev at several points of betraying not only Stalin, but socialism itself.

Historians and political scientists who will want to mine this book for the nuggets of previously unknown political gossip will be largely disappointed. On many of the most sensitive issues, Molotov claims ignorance, at times disingenuously (even of the secret protocols of the Nazi-Soviet nonaggression pact!), and he does appear to have been removed from the center of power during Stalin's last years after the war. (In fact, Molotov suspects that NKVD Chief Lavrentii Beria and others had played on Stalin's paranoia to poison the leader against his faithful servitor.)

Beyond these reasonable limitations, however, any scholar approaching the book should do so with great caution because of the principle according to which it is constructed. Although Chuev italicizes his own and others' words to distinguish them from Molotov's, the conversation often leaves the reader wondering just who is speaking; Chuev, a poet and self-proclaimed "Russian patriot," and the other interlocutors clearly share many of Molotov's Stalinist political attitudes, but Chuev in particular frequently puts words into Molotov's mouth. What we have in *Molotov Remembers* is not a memoir at all, but rather a frustratingly sloppy oral history with a confusing array of voices.

Chuev has also collapsed several years of interviews into passages that are only annotated at the end with several dates, and the selections are not given in chronological order. A historian cannot reconstruct the evolution of Molotov's ideas or attitudes over time from this presentation. That Molotov frequently has seemingly contradictory views about a person or event is not the problem; rather, the reader cannot ascertain what in the conversation induced the change in reaction. A final serious drawback is the translation itself, which ranges from awkward and ungrammatical (and this is not always due to the Russian-language original) to misleading, especially when the Russian is colloquial. The result is a discontinuous, fragmented, and very repetitious record of thoughts that are often not pursued to any end, either because the interviewer was not well versed enough to press Molotov for more details, he did not want to offend Molotov by pointing out omissions or distortions, or he simply found Molotov's version persuasive as is.

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What then, in the end, can be learned from this (and a companion Russian-Language volume by Chuev on Lazar Kaganovich, the other long-term survivor from Stalin's closest entourage)? A careful reader will not learn new details about events as much as the personal hatreds and loyalties of Molotov. This helps confirm our suspicions that Stalin's circle fought hard and often fatal battles over major policy decisions and rarely were united in their opinions about the direction of the country. Besides Khrushchev, Molotov reserves some of his most bilious outrage for Beria, Foreign Minister Maxim Litvinov, and World War II hero Marshal Georgii Zhukov.

What is most effectively conveyed by the conversations, however, is something generally more elusive and less palpable, namely, the world view of Molotov and, through Molotov's example, the categories and structures of Bolshevik thought in its Stalinist variant. Molotov, even shortly before his death in 1986, held onto his faith in the socialist cause and his devotion to Stalin. He expresses no remorse for the cruelty and hardships that he witnessed and oversaw; rather, he adopts a ruthless form of Hegelian fatalism in that the greater the struggle, the more noble the result; what was, had to be. Molotov is even able to excuse Stalin the imprisonment of his own wife, Polina Zhemchuzhina, as one of the inevitable mistakes in the heady process of building a better life for the masses.

In the end, the ideological bankruptcy of the Stalinist leadership emerges clearly from Molotov's own words and Chuev's efforts to defend even the most reprehensible aspects of Stalin's legacy. Despite all the annoying features of Chuev's book, Molotov as a historical figure does manage nonetheless to peer through the pages, and the portrait is sobering indeed.

MARK VON HAGEN
Columbia University

Behind the Mule: Race and Class in African-American Politics *by Michael Dawson. Princeton, NJ, Princeton University Press, 1994. 234 pp. $35.00.*

Behind the Mule, despite its provocative title, is not about the woes of black peasants in the early twentieth century rural south, but rather explores the voting behavior and political opinions of African-Americans in what may be called the post-civil rights era. The book explains why black politics is unique and why it will remain so for the foreseeable future. More specifically, Dawson examines why the black middle-class political opinions are at variance with their white cohorts. He set a Herculean task for himself, that is, to resolve the recurrent question: Is race or class more important in explaining the political behavior of African-Americans?

Armed with data, Dawson enters the debate informed by the research of psychologists and economists. His research data suggest that the political behavior of the black middle class is an anomaly. Their lifestyles belie their politics. Simply

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put, middle class African-Americans hold political views that are fairly consistent with their less fortunate black brethren. Since there is very little class conversion in their reported attitudes about politics, they emerge as an odd group. Dawson's data demonstrate that blacks, regardless of class position, share a common belief that their individual fate is linked to that of blacks as a group. Accordingly, blacks employ a "black utility heuristic" that enables them to use race group status as a proxy for individual utility. Blacks seek to maximize group interest as a method of promoting individual interest. This stratagem allows them to preserve their group identity as well as react to issues and politicians in racial terms.

This sense of connectedness has its roots in culture but is reinforced by racial discrimination. No African-American can completely escape the effects of discriminatory practices. Middle class blacks have enjoyed economic mobility in spite of racism. Intriguing and successful as they are, the black middle class does not possess an entrepreneurial or independent occupational base. The group is heavily dependent upon government jobs and thus is vulnerable to shifts in politics and economic fortunes.

Politicians who attempt to divide black people along class lines are not likely to be successful. This is not to say that middle and lower class blacks are in lockstep on all political issues. Dawson found political differences among blacks on party identification, racial separatism, and redistribution issues. Lower class blacks are more likely to support a black independent party and black nationalist ideas about racial separation than are middle class blacks. There are also disagreements on redistribution policies. Middle class blacks are more likely to agree with their white cohorts on those issues.

When Dawson compares black and white opinion, he finds striking disagreements on most issues. His data show that blacks and whites view political issues differently and often adopt opposite positions. Accordingly, Dawson rejects the notion that the gap between black and white opinion is closing. He concludes that race is more salient than class in understanding African-American political behavior. Although this book is well documented, it will not end the debate over whether class or race explains black politics. It offers cogent insights into the debates. Indeed, Dawson anticipates reactions to his conclusion and proffers four scenarios for changes in these attitudes.

Finally, the book is lucidly written and replete with historical and empirical data. Anyone seeking to write about black politics should read Dawson's brilliant book. It is a major contribution to the field of black politics and voting behavior.

WILBUR C. RICH
Wellesley College

Deadlock or Decision: The U.S. Senate and the Rise of National Politics *by Fred R. Harris. New York, Oxford University Press, 1993. 344 pp. $27.50.*

As a former national party chair and U.S. senator and for many years a practicing political scientist, Fred Harris merges his training and experience in each in an

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effort to interpret the changing role of the Senate in the context of the nationalization of American politics and to offer some prescriptions for enhancing the effectiveness of the Senate as a policy-making partner in American government. Harris's concern is that the Senate has lost its attractiveness, both to its members and the public, who need to be understood and addressed. He does this through a synthesis of the research literature on the Senate and on American politics generally supplemented by interviews he conducted with senators.

After a chapter discussing the development of the Senate, the book is divided into three major sections. The first of these deals with how the nationalized environment of American politics has changed Senate elections, campaign financing, the role of interest groups, and the issues with which the Senate must deal. This includes some fairly familiar material on the nationalization of Senate campaigns, the use of the media and polling, the growing cost of campaigns, the increased competitiveness of Senate elections, the importance of political action committees (PACs), and the "national advocacy explosion." Senators, according to Harris, are now national spokespersons on a range of issues, are constantly concerned with the next election campaign, and are forced to devote inordinate effort to raising money. He argues that campaign finance reform is critical if senators are to show more concern with the public interest.

The second part focuses on how the nationalization of politics has made the Senate both more individualistic and more partisan. The result has been that obstructionism in the Senate is a growing problem, especially in an era of divided party control. The senators are more involved with articulating positions than with resolving policy differences. Harris advocates changes that would limit the capacity to obstruct and thus foster interparty and interbranch cooperation.

In the last section, Harris examines the effect of nationalization on the Senate's role in making budgetary and national security policy. He traces the development of the Budget Act since 1975 and the efforts in the post-Vietnam era to carve out a role for Congress in foreign policy decision making. His analysis leads to reform recommendations of a fairly specific nature: a restructuring of Senate committees and a merging of authorizing and appropriating responsibilities in the same committees, the use of budget summits and a three year budget, and an institutionalized foreign policy council to encourage cooperation between Congress and the president.

The congressional scholar will find that the analysis of the changing nature of campaigns, the role of PACs, the individualized Senate, and the strengthening of parties offers little that is new. And Harris cannot at times resist getting sidetracked in the details of stories instead of presenting material in a more systematic manner. In addition, the interviews with current senators are not as well integrated as one might hope. And there are occasional factual errors. (Phil Gramm was not "expelled" from the House Democratic Caucus. And the movement of reconciliation from after the second budget resolution to after the first budget resolution occurred in 1980 during the Carter presidency not in 1981 as part of a Republican manipulation.) The strength of the book comes in Harris's

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efforts to discuss the problems that this nationalization has created for the Senate and to present and analyze some alternative solutions. This capacity makes a valuable contribution; the book can serve as a useful vehicle to stimulate serious discussion of reforms.

BRUCE I. OPPENHEIMER
Vanderbilt University

The Walls Came Tumbling Down: The Collapse of Communism in Eastern Europe *by Gale Stokes. New York, Oxford University Press, 1993. 319 pp. $25.00.*

A shelf full of volumes on the sudden collapse of communist rule in Eastern Europe in 1989 has already appeared. Most of them deal with the events of that year, some in great detail. The particular merit of this volume is its careful review of the course of events from 1968 to 1989 leading to that dramatic final stage. It is a well researched, well reasoned, and well written account.

Many studies of the subject focus on the East-West cold war conflict, and Soviet and Western policy toward Eastern Europe, seeing the region as the object of international interest. This study, by contrast, concentrates on the internal developments within each of the six Eastern European members of the Warsaw Pact and Yugoslavia. All except Yugoslavia were directly affected by the changes in Soviet policy, and all were affected by the changing international environment, but also by their individual histories and especially the recent history of developments after the Soviet suppression of the Prague Spring in 1968. Their individual courses of development affected not only how they arrived at late 1989 (in Yugoslavia 1991), but also their evolution since that time, and their prospects for the future.

Stokes is an optimist for the long run, but he offers well warranted if pessimistic cautions about the path ahead. He recognizes that "the creation of viable East European variants of pluralism will be a difficult and confusing task" (p. 260), and one that may find quite different solutions. Discarding communism as a failed experiment does not mean that it is either clear what should succeed it nor easy to establish a new system. Democracy, capitalism, social democracy, and other variants of political economy exist after all in many forms in Western Europe, where they have developed over many years. Eastern European countries have varying pre-communist—and communist—experiences and face the problems of transition from their inheritances to an uncertain future. Moreover, establishing a working consensus within each society on future goals and the nature of a future system is far from easy. Several established pre-communist states have not even managed to stay together: Yugoslavia most obviously and painfully, but also Czechoslovakia and of course nearby the Russian/Soviet empire of the past three hundred years.

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There is very little in the book on the foreign and security policies of the East European states. Although the Warsaw Pact left little leeway for individual policy differentiation through 1989, there were differing ideological and political positions. It would have been useful in particular to sketch out the different considerations and positions of the Eastern European states during the short final disintegrative phase of the Pact (in 1990–1991) and the initial steps in those years in assessing security requirements and in taking new departures. The author does carry his account of the internal political and economic steps of these states through those critical years (in a chapter charmingly titled "The First Two Years of a Long Time").

Although more detailed accounts of developments within individual states can be found, and the external dimension tends to be slighted, this book provides a very good review of internal developments within the states of Eastern Europe as they moved toward what became the Revolution of 1989, and offers much that can help inform the reader for the future.

RAYMOND L. GARTHOFF
Brookings Institution

Common Sense About Police Review *by Douglas W. Perez. Philadelphia, Temple University Press, 1994. 322 pp. $44.95.*

Using direct observations of five police review systems, data from attitude surveys of police officers and citizens, interviews as well as accounts from review systems in a score of other cities gathered over seventeen years, Douglas W. Perez has provided a thorough and thought-provoking comparison of police review systems. He is among the first to weigh the strengths and weaknesses of civilian and internal review in a measured manner that informs discussions of this highly controversial issue with facts and insights about accountability mechanisms.

Police misconduct is a politically sensitive and deeply troubling problem. The emotional debate about the review of police conduct received sporadic publicity during the first half of this century. Police departments generally dealt with citizen complaints informally and in the absence of a systematized investigation process, intimidation of citizen complainants was commonplace. Police handling of urban riots and mass demonstrations in the 1960s focused public attention on the existence and gravity of police abuse, and sensational incidents of police abuse have provided political support to advocates of citizen review. Although by 1991, thirty of the nation's fifty largest cities had some form of civilian review, and almost all of the 25,000 police jurisdictions had accountability mechanisms in place, nearly 84 percent are internal police units with no external input; 9.7 percent are monitoring systems that include civilians and police; and a scant 6.5 percent are external to police agencies.

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Few subjects have generated more controversy over the relationship between the police and the community than civilian review of police misconduct. Perez suggests that complaints are endemic to the police experience and that most are not substantial in their content or intent. According to survey data, citizens desire their government to respond to their grievances in an open and effective manner. The findings in *Common Sense About Police Review* indicate that about 80 percent of the complaints are not substantiated by any kind of review mechanism; thus most complainants are not satisfied with review, whatever the form. On the other hand, police data suggest that any complaint is substantial to a police officer, because it may affect assignments, promotion, income, and future. Fearing loss of control of their organizations, police argue that civilian review is inherently unfair, because citizens are unfamiliar with police work. Yet, when civilian boards and police review investigations run parallel the outcomes are almost always the same, and generally civilian review finds police guilty of misconduct less often.

The author compares three models of police review: the internal affairs unit of the Oakland, California Police Department; the entirely civilian Police Review Commission in Berkeley; and Kansas City, Missouri's ombudsman-like monitoring system which uses civilians and officers. By applying integrity, legitimacy, and learning as evaluation criteria, Perez finds that all types fairly, competently, and objectively handle individual complaints. Although internal review systems tend to be more rigorous and find more officers guilty than civilian review, external review is perceived to be more open and honest and enjoys much greater community acceptance. Of the three measures, learning, the author suggests, is the most important mission of any review mechanism. External review, though a less effective deterrent on police systems, provides an important learning tool because of its focus on setting policy. Perez reasons that the best police review system is the hybrid and that monitoring systems come closest to meeting the concerns of all interest groups.

In spite of several assertions that are weakly supported and occasional distracting contradictions, the author has an impressive grasp of the literature, ideas, and issues. Perez's treatment of the nature of the police subculture and of the debate surrounding civilianization of police functions generally and of complaints review specifically make this an important contribution to the literature on the still highly guarded world of American policing.

PAMELA D. DELANEY
New York City Police Foundation, Inc.

Living on the Edge: The Realities of Welfare in America *by Mark Robert Rank. New York, Columbia University Press, 1994. 272 pp. $29.95.*

Social welfare is a field marked by a huge chasm between what the public believes and what social scientists "know." For example, it is part of the society's common-

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sense that the welfare system provides powerful incentives for poor women to bear out-of-wedlock children, but academic studies have demonstrated that women receiving welfare have lower fertility rates than the general population. This chasm in turn creates a dilemma for scholars in the field. They can choose to ignore widely shared popular views and press forward with scholarly analyses of welfare, but the result is likely to be work that is read by only a handful of academics. Or they can try to amass evidence to correct popular misconceptions, but then the danger is that other scholars will criticize their work for failing to break new intellectual ground.

Mark Rank has bravely pursued the second path. His goal is to debunk popular stereotypes of welfare recipients as being overwhelmingly lazy and undeserving. Using a combination of quantitative and qualitative methods, he mobilizes data persuasively to make two basic points. First, much welfare use originates in life crises beyond the control of the recipients, such as desertion, accidents, illnesses, or involuntary unemployment. Second, the only thing that really differentiates most welfare recipients from the broad middle class is their lack of resources. In terms of their motivations, their values, and even their perceptions of other welfare recipients, they are indistinguishable from the rest of us.

As a result, his book should be very useful in undergraduate teaching, particularly if the press publishes a paperback edition. But Rank's project has left him vulnerable to the predictable critique that scholars in this field will find little here that is new or surprising. Even the relatively brief discussion of possible solutions to the problems of the welfare population simply recycles familiar arguments.

But Rank also leaves himself open to a more serious criticism. Both his quantitative and his qualitative data were gathered in the state of Wisconsin. Rank argues that this strengthens his case, because Wisconsin has historically been relatively generous in its level of welfare spending. Hence, if the arguments about the insidious and destructive effects of welfare programs are accurate, then Wisconsin should have more than its share of social pathology. The fact that its welfare recipients appear relatively wholesome should be seen as proof that these arguments are incorrect. But much of the national debate about welfare recipients is really focused on one Group—African-American single mothers living in inner city neighborhoods. It is not at all obvious that the Wisconsin samples give sufficient weight to that group. The quantitative sample is drawn from welfare applicants from all over the state of Wisconsin, but of all of the female heads of households in this group, only 35.1 percent live in a major metropolitan area, and only 23.5 percent are African-American. Hence, probably fewer than 15 percent of his female household heads are drawn from this most debated population. Moreover, the qualitative sample was drawn from a single county that was supposed to be a reasonable representation of the state as a whole. While African-Americans were 28 percent of this group, Rank could easily have bypassed the kind of inner city population that is at the center of the debate.

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To be sure, it is important to make the point that African-Americans represent only a minority of the Aid to Families with Dependent Children (AFDC) population and that there are many whites on welfare. Nevertheless, Rank's effort to attack popular stereotypes is undermined by his failure to deal head on with the issue of the so-called urban underclass.

FRED BLOCK
University of California, Davis

Uneasy Partners: Big Business in American Politics, 1945–1990 *by Kim McQuaid. Baltimore, Johns Hopkins University Press, 1994. 224 pp. Cloth, $38.95; paper, $12.95.*

The art of narrative historians is to tell a compelling story; that of institutional political scientists is to make useful distinctions. In McQuaid's story, business and government in the United States are in a "close, symbiotic relation" (p. xiii), much like two people who live together because they need each other but can bring themselves neither to get married nor to break up. He recounts in easy, lucid prose the history of that relationship since 1945: the attempt by the National Industrial Recovery Act to forge an explicit business-government partnership, the victories by business over labor in the fight for the Taft-Hartley and Landrum-Griffin acts, the support given by corporations to the Marshall Plan and the Bretton Woods system, and the benefits provided to certain oil companies by tax, trade, and foreign-policy decisions.

The romance turned rocky in the 1960s and 1970s, with John F. Kennedy intimidating the steel industry, Lyndon Johnson setting up the Equal Employment Opportunity Commission and signing the National Highway Traffic Safety Act, and Richard Nixon creating the Environmental Protection Agency (EPA) and signing into law the Clean Air and the Occupational Safety and Health Act (OSHA). Aware that it had lost control of events, business regrouped, "mobilized against Ralph Nader" (p. 154), defeated the common situs picketing bill, weakened various social regulations, and slowed the growth of new rules.

A political scientist would not disagree fundamentally with McQuaid's accounts but would portray these events a bit differently. The historian would see sharp breaks and shifts in relative power, where McQuaid sees modest adjustments and accommodations to new realities. The historian would stress the difference between traditional market regulation and the newer social or process regulation where the political scientist acknowledges the differences but makes rather little of them. The historian would look at American regulation in comparative context and stress its adversarial character while the political scientist looks only at the American experience and sees mainly its accommodationist tendencies.

David Vogel, to whom McQuaid refers but whose work he uses less than I think it warrants, has made just these distinctions and emphasized just these

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comparative dimensions. Others, such as Steven Kelman, Graham Wilson, Ronald Brickman, and Alfred Marcus have done the same. I raise this matter not out of any concern for disciplinary boundary maintenance but because students reading this brief introduction to business-government relations will, I think draw the conclusion that those relations are a good deal cozier and less problematic than I think is the case.

For example, McQuaid refers to the clumsy effort by General Motors to intimidate Ralph Nader but does not dwell on the result—a stunning political defeat for the world's largest corporation and the opening up of vast new opportunities for social regulation. He mentions the creation of the EPA but not the business defeat in the struggle to define the contents of the Clean Air Act. He notes the birth of OSHA but not the adoption by that agency of a prosecutorial style in enforcing its regulations, a style that persisted despite the fact that Gerald Ford campaigned against OSHA. Deregulation is mentioned but there is little attention to how remarkable much of that was: like the bumble bee that theoretically can't fly, a massive industry that wanted to retain its regulatory regime was defeated by an odd coalition of Democrats and Republicans that lacked any popular mandate to act as it did. (Much the same was true of trucking deregulation.)

My suggestion: read McQuaid to learn the story, read political scientists to understand the moral of the story.

JAMES Q. WILSON
University of California at Los Angeles

Fidel Castro *by Robert E. Quirk. New York, W. W. Norton, 1993. 898 pp. $35.00.*

This prodigiously researched biography of Fidel Castro by an eminent historian of Latin America is in the end a disappointment. It provides a richly detailed account of Castro's struggle against the dictatorship of Fulgencio Batista during the 1950s and of the key events during the first decade of revolutionary government. But the book gets sketchier as time goes on. Of its 840 pages, 650 are devoted to the 1950s and 1960s. The 1970s get 156 pages, the 1980s get just 26 pages, and the years since the collapse of the Soviet Union get only eight.

Important events from these later decades get little attention compared to much less significant events in the early years. Virtually nothing is said about the Soviet-style economic management system adopted in the early 1970s, the government's sporadic efforts at rapprochement with the church, Cuba's policy in Central America, Castro's efforts to push the New International Economic Order during his leadership of the nonaligned movement, or the negotiations that ended the Angolan civil war.

Quirk has a very traditional approach to writing history; he recites the flow of events, as they happened chronologically, with virtually no analysis. His focus

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remains unswervingly on Fidel Castro, so the readers feels as if over four decades we never leave the *Comandante's* side. In places—during Castro's trips abroad especially—the text offers little more than a running synopsis of Castro's innumerable speeches. Perhaps this is Quirk's sly way of forcing the reader to experience firsthand the tedium that many Cubans may feel after listening to thirty-five years of such expositions.

The weakness of Quirk's nonanalytic style stands out in his handling of Cuba's role in Africa. He provides a detailed account of Castro's 1972 trip—where he went, who he met, what he said, how he was received. But there is no account of what Cuban policy was trying to achieve in Africa, how successful it was, and what its costs were. Without that broader analytic framework, Cuba's subsequent decisions to intervene in Angola and Ethiopia appear arbitrary, impulsive, and irrational—which, not coincidentally, is exactly how Quirk views Fidel Castro's personality.

Quirk's contempt for Castro and for all his senior associates pervades the book. Ernésto Che Guevara, we are told, joined the Cuban revolutionaries to escape from his wife. He died in Bolivia because he was an incompetent amateur soldier whose life was "a failure . . . a small pebble in the detritus of history" (p. 583).

Fidel Castro is portrayed as a cowardly, self-centered, insecure, intolerant, boorish, intellectually limited, sexually immature, slightly paranoid, unsophisticated "country bumpkin." His desire to radically transform Cuban society is attributed not to any principle or sympathy for the poor, but to his animosity toward the rich, whose sons made fun of him at boarding school. Castro was no Marxist in 1953 when he attacked José María Moncada, nor in 1959 when he took power, Quirk concludes. He embraced socialism not out of conviction, but because he needed a way to rope the Soviets into financing his adventure.

Absent any other analytic framework, the implicit explanatory scheme that emerges from such psychoanalysis-at-a-distance is that all of Cuba's problems are a result of Castro's psychopathology. But if Castro is actually the pathetic neurotic that Quirk makes him out to be, how did he manage to inspire several thousand Cubans to risk their lives in the 26th of July Movement to overthrow Batista? How did he establish the most intense and enduring charismatic authority of any leader in the second half of the twentieth century? How did he defy the United States and survive the efforts of eight presidents to destroy him? These very large anomalous facts demand some explanation. Quirk's inability to account for them is the strongest evidence that his portrait of Fidel Castro is inadequate.

WILLIAM M. LEOGRANDE
The American University

Revolution Until Victory? The Politics and History of the PLO *by Barry Rubin. Cambridge, MA, Harvard University Press, 1994. 271 pp. $24.95.*

Barry Rubin has written an excellent and timely analytical political history of the Palestine Liberation Organization (PLO), one which investigates and inter-

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prets its political circumstances, strategies, and doctrines from an inception in the late 1950s to the earthshaking events of 1993 culminating in the Rabin-Arafat handshake on the White House lawn. Above all, it provides the reader a vivid portrayal of the seemingly endless twistings and turnings and reversals of PLO policies, a high-wire act presided over by impresario Yassir Arafat.

The book's opening sections describe the founding of the PLO in 1964 at a meeting attended by 400 delegates in East Jerusalem, under the leadership of Ahmed Shukayri but with the dominating influence of then Egyptian President Gamal Abdel Nasser. Its stated purpose was to destroy the state of Israel and replace it with an Arab state called Palestine. Five years earlier, a somewhat rival organization—Fatah—had been inaugurated in Kuwait by its now legendary founders: Yassir Arafat, Farouk Quaddumi, Abu Iyad, Abu Jihad, and the brothers Khalid and Hani al Hasan. They began their training in Algeria, moved to Damascus, and then in the period after the 1967 war, took over the humiliated PLO, revised its charter, and organized a program of terror that would be the organization's hallmark for the next quarter century. A major theme of this book is that of the tenacious coherence of the organization's founding group through interminable struggles and reversals, at least up to the relatively recent assassinations of Abu Jihad and Abu Iyad.

Rubin does an excellent job of tracing the PLO's complex history through its innumerable crises and turning points. Individually, most of these events will be familiar and memorable to anyone who follows Middle Eastern affairs, but reading through it all in sequence is a salutary and sobering experience. There is the major expansion of terrorism in the late 1960s, which culminates in the PLO's bloody expulsion from Jordan in 1970. Then, on to the Munich Olympic massacre, the 1973 war, the PLO's quiet deal with the United States resulting in Ali Hasan Salama, the Black September leader, becoming a liaison to the CIA.

Afterward, in 1974, the PLO deemphasizes international terrorism—hijacking and assassinations—in favor of cross-border incursions into Israel and terrorist acts within the Jewish state. The PLO builds a bastion in Beirut, but then comes the bloody Lebanese civil war and the PLO's defeat by erstwhile patron Syria in 1976. Then came the Camp David accords, the 1982 war that resulted in the PLO's temporary expulsion from Beirut, the subsequent onslaught against the PLO by Syria and its allied Amal forces, and then the 1985 rapprochement with Jordan. In the 1980s, there was the growing competition both with resident West Bank leaders and Islamic Hamas. Throughout this complex history, at various junctures, Egypt, Jordan, Iraq, Syria, and Libya all take turns at being Arafat's partner and enemy. Then, during the period 1991–1993, came the acceleration of the "peace process" with the Madrid Peace Conference and the secret negotiations in Norway under the aegis of the Norwegian foreign minister leading to the ceremony on the White House lawn.

If there is one major theme here, it is the extent to which the PLO has had to conduct its diplomacy on two levels, corresponding roughly to the distinction

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between words and deeds. The organization is portrayed as Janus-faced, speaking with a somewhat conciliatory tone to the outside world, with Washington as the primary audience, while maintaining a rejectionist posture when addressing the Arab world. Reading Rubin's concluding chapters reminds one of just how deeply rooted is the PLO's obsession with driving Israel out of the Middle East altogether. Rubin concludes by saying that "the PLO failed in achieving total victory but it succeeded in becoming a key force in deciding the conflict's conclusion" (p. 207). But as this review was being written, Arafat's long-time deputy, Quaddumi, who had opposed the peace agreement, was reported again having spoken aloud in menacing tones, reminding us anew of the fragility of the recent accords, and inducing caution about "the conflict's conclusion."

ROBERT E. HARKAVY
Pennsylvania State University

Giving for Social Change: Foundations, Public Policy and the American Political Agenda *by Althea K. Nagai, Robert Lerner, and Stanley Rothman. Westport, CT, Praeger, 1994. 240 pp. $55.*

Although critics early in this century vilified philanthropic foundations as nefarious agents of their robber baron founders, later indictments have dwelled on their alleged tilt toward the Left. The authors of *Giving for Social Change* claim to have settled the matter in "the first quantitative study of foundations based on a survey of the opinions of the foundation elite and a systematic content analysis of public policy grants" (p. 5). They conclude that a critical mass of foundation leaders and foundations push for social change and push foundation practices increasingly to the Left. Philanthropy has become a form of private government, minus the political control exercised by the public through elections.

The authors have previously studied elites in business, the media, the military, and other groups. The profile they draw of the foundation elite finds them to be much less the closed, upper-class, Anglo-Saxon Protestant strata than other American elites.

This finding, along with conclusions on foundation leaders' ideological views, are drawn from a highly detailed questionnaire sent to a sample of foundation leaders—289 persons drawn from the largest (grants over $1 million) 844 foundations that operate nationally; 126 responded. The data are further limited in that, for the sake of confidentiality, they do not distinguish between foundation staff and trustees. Yet a major plank in the conservative critique of foundations is that staffs subvert the wishes of foundation donors or, when families are no longer present, manipulate other trustees. (Of course, some founders and trustees are liberal, for example, Joan Kroc of the McDonald's chain, and some young heirs support the few truly radical philanthropies.)

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The authors' survey results appear to refute the conservative critique of liberals running amuck in the corridors of foundation power. A plurality of the respondents (42 percent) identify themselves as conservative, 21 percent as moderate, and 37 percent as liberal. Although the liberals support policies encouraging the welfare state, virtually none of the foundation elite support a radical restructuring of American capitalism. Most are pro-choice. Divergence emerges on issues of homosexuality and school prayer. The analysis also appears to contradict the view that large foundations are activist. Only 27 percent of those surveyed made public policy grants; of these, 44 percent were regarded as liberal, 13 percent conservative.

The conservative critique also finds liberal foundations running pilot programs to draw government into more social spending, supporting activist groups bent on increasing the political power of the poor, minorities and women. Conservative foundation preferences were found to be aging, health, think thanks, and economics. Their grants proportionately go more for research (including the present study) than liberal philanthropy's.

Giving for Social Change contains a useful review both of conservative critics of foundations and of ruling elite theorists. But despite their complex statistical analyses of staff influence, dimensions of political ideology, etc., Nagal, Lerner, and Rothman provide no support for a sweeping generalization of foundations as activist engines of social change (or, for that matter, bulwarks of a capitalist status quo, as critics on the Left would have it). The authors themselves note, "most foundations are ideologically neither liberal nor conservative. They are neutral and avoid public policy funding. We call them traditional" (p. 157). Craig Jenkins, a leading student of social movements, analyzed foundation grants for social movement organizations between 1953 and 1980 (compared to the present authors' analysis of two years) and found that in the peak year, they constituted just .69 percent of total foundation giving.

Whether this figure or the Smith College group's constitute a "critical mass" of liberal virus in the body philanthropic, partisans will continue to urge more foundations to move closer to their respective poles of the ideological spectrum.

RICHARD MAGAT
Yale University

Cooperative Pluralism: The National Coal Policy Experiment *by Andrew S. McFarland. Lawrence, University Press of Kansas, 1993. 219 pp. Cloth, $29.95; paper, $14.95.*

As its subtitle suggests, this book is an analysis of an experimental effort in the late 1970s by environmentalists and coal industry executives to negotiate their differences over the direction of national coal policy in general and over strip

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mining and air pollution in particular. The idea behind the National Coal Policy Project (NCPP) was that these traditional antagonists might be able to reconcile some of their political conflicts by meeting together in a series of conferences without the participation of any government officials. Andrew McFarland has written this analysis of the NCPP so that the lessons of this attempt by normally adversarial groups to change public policy by negotiating among themselves—this experiment in policy making by "groups without government," as the author calls it—can be learned by social scientists and retained for the general public record. In the process, McFarland has written an absorbing book that offers fresh insights into interest group politics in Washington. This work also makes an important theoretical contribution to our understanding of both the conflictual and the cooperative aspects of the relationships among groups within an issue area, and it draws our attention to the central role that government officials play in making public policy.

The normally adversarial groups that made up the membership of the NCPP agreed in advance that their conference sessions would not include government officials and would be governed by a set of negotiating principles known as the "Rule of Reason"—"Data should not be withheld from the other side; delaying tactics should not be used; extremism should be countered forcefully . . . but not in kind; and integrity should be given first priority" (p. 34). As McFarland explains it, this behavioral code "provided a short and readily understandable set of rules for nonadversarial behavior" (p. 35) and not only attracted participants but yielded a process in which disputants dealt directly with each other (there being no third party present), treated one another respectfully as equals, exchanged information and perspectives, and "found unsuspected middle ground" (p. 42). The participants reached many agreements on nontrivial issues involving the regulation of coal mining, the simplification of licensing procedures, and the desirability of having public policies that reflect economic theory (notable examples being the adoption of marginal cost pricing for electricity and the idea of emissions taxes).

But despite their agreement on a broad platform of issues, many of the businesses and environmental groups represented in the NCPP ultimately withheld endorsement of the consensus platform, thus impeding its implementation. In one of the most interesting parts of the book, McFarland shows how the denial of group endorsements can be explained by two realities of group politics—the power of minority veto and the need to placate allies. Most groups avoid taking actions or making endorsements when doing so would offend a substantial portion of their membership. And portions of the NCPP agreements were sufficiently controversial to elicit strong objections from minorities within environment groups and trade associations like the National Coal Association. This difficulty was compounded by the fact that on both sides of the table, strong objections by two or three groups within the larger sectoral coalitions were sufficient to kill the proposal, since the supportive groups were unwilling to alienate their traditional political partners. Not surprisingly, some of these objections

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came from groups on whose "turf" the NCPP was seen to have infringed. On the environmentalist side, for example, the NCPP failed to win the support of two key groups—the Environmental Policy Center (EPC) and the Natural Resources Defense Council—which saw themselves as kingpins on, respectively, strip-mining issues and air-pollution control measures, and whose leaders (especially Louise Dunlap at EPC) rankled at what they regarded as the presumption of the NCPP.

Even though the NCPP thus foundered on familiar political shoals, it was not completely devoid of successes, one of which was the influence it had on the writing of regulations by the Federal Energy Regulatory Commission on issues related to cogeneration of electric power. More broadly, the NCPP's record of success at negotiating differences among traditionally adversarial groups encouraged other experiments (at the Environmental Protection Agency and elsewhere) with what has come to be known as regulatory negotiation. Reflecting on all this, McFarland concludes that "even if normally adversarial parties find common interests, the resultant agreements are still unlikely to lead to public policies unless the government plays an active role in shaping or implementing agreements" (p. 151). This is an important insight overall, but especially so in an era of growing antigovernment sentiment.

As readers of McFarland's previous works might expect, this is a meticulously researched case study that offers a table-side view of the NCPP at work and a fair-minded assessment of its strengths and weaknesses, its successes and failures. And as those same readers also will expect, this is not merely a case study, but a vehicle that McFarland uses to take us on an absorbing tour of an oddity on the landscape of the policy-making process. Along the way, he treats us to practical insights, syntheses of interesting literatures, and fresh contributions to theory—all of which will make this book of considerable interest to widely varying audiences of scholars, including those attentive to interest groups, public policy making, and the politics of energy and the environment.

JOHN T. TIERNEY
Boston College

Time, Politics and Policies: A Legislative Year *by Burdett A. Loomis. Lawrence, University Press of Kansas, 1994. 199 pp. Cloth, $29.95; paper, $12.95.*

The year he picked in which to study the impact of "time" on politics and policy—1989—reveals Burdett Loomis to be a master of scholarly timing. While he hung around the capitol; read all the papers every day; schmoozed with staffers, legislators and members of the press corps; convinced the governor and other key players to give him interviews (and sometimes take him into meetings) a lot was happening in the Kansas legislature. The action included leadership fights in

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both houses, a rebellion within the majority party of the House, a hard-fought compromise on return of a tax windfall, legislative reapportionment, passage of a massive highway bill with an attendant tax increase, a failed push by the governor for a death penalty, and a major decision on prison construction forced by a federal judge.

Loomis knew when he set out to do this study that Kansas's governor, Mike Hayden, would be using this year to help build a record for his reelection bid in 1990. He knew that certain items had to be on the state agenda, because they faced externally imposed deadlines for action, because leaders had bound themselves to action, because processes had been set in motion that would bring them forward in previous years, or because they had to be dealt with on a regular, cyclical basis by the state. He also knew that the year after legislative elections, the year in which all members of both houses are most distant from their next election, is the time in the legislative cycle when members are most likely to take on controversial decisions. And finally, he knew that in this year, as in every year, the predictable close of the session would provide the overall deadline necessary for endgame politics.

But there was a lot the author could not know as he planned his research. He could not predict the impact of the leadership fights in both Kansas legislative houses upon their decision-making dynamics. He could not foresee changed tactical approaches to key matters by the governor, nor his decision to avoid taking on the consequences of statewide property tax reappraisal in 1989, fatally pushing this key matter into the election year. Nor could he know that the commitment of House Majority Leader Robert Miller would bring another controversial matter—campaign finance reform—to the top of the political agenda.

It was Loomis's knowledge of trends, cycles, and deadlines—his conceptual concerns in this volume—that allowed him to choose a very good year in which to research this book. His analysis of the interaction of these predictable elements with those that were not predictable, the choices made by key players facing the opportunities and problems that arose during the legislative session make this such a useful study of state legislative politics and policy making.

The Kansas legislative session of 1989 was hardly a typical one, as most observers of legislative life in America would agree. But it did not have to be to allow the author to effectively explore his research concerns and to produce a work that has value at several different levels. Aficionados of Kansas politics will be unable to put it down, while its groundedness in the literature of legislative politics and policy making allows this volume to transcend the usual limits of a single state study, giving it general value and utility. This is a fine book by a political scientist who's affection for legislatures, legislators, and politics is palpable and engaging. I recommend it.

GERALD BENJAMIN
The State University of New York, New Paltz

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Eleanor Roosevelt: A Comprehensive Bibliography *compiled by John A. Edens. Westport, CT, Greenwood Press, 1994. 506 pp. $75.00.*

The Electoral College and the Constitution: The Case for Preserving Federalism *by Robert M. Hardaway. Westport, CT, Greenwood Press, 1994. 200 pp. $55.00.*

From Aristotelian to Reaganomics: A Dictionary of Eponyms and Biographies in the Social Sciences *by Richard C. S. Trahair. Westport, CT, Greenwood Press, 1994. 721 pp. $110.00.*

The Human Development Report, 1994 *by the United Nations Development Programme. New York, Oxford University Press, 1994. 225 pp. Cloth, $29.95; paper, $17.95.*

Hunger 1995: Causes of Hunger, Fifth Annual Report on the State of World Hunger *edited by Marc J. Cohen. Silver Spring, MD, Bread for the World Institute, 1994. 141 pp. Paper, $14.95.*

A Modern Guide to the European Parliament *by Martin Westlake. New York, Pinter Publishers, 1994. 302 pp. Cloth, $59.00; paper, $22.00.*

Women's Rights in the United States: A Documentary History *edited by Winston E. Langley and Vivian C. Fox. Westport, CT, Greenwood Press, 1994. 356 pp. $49.95.*

World Population Projections: Estimates and Projections with Related Demographic Statistics, 1994–95 *by Eduard Bos, My T. Vu, Ernest Massiah, Rodolfo A. Bulatao. Baltimore, The Johns Hopkins University, 1994. 521 pp. Paper, $34.95.*

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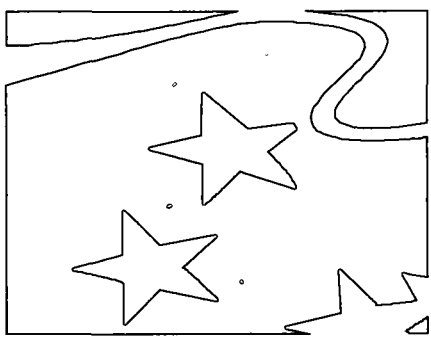

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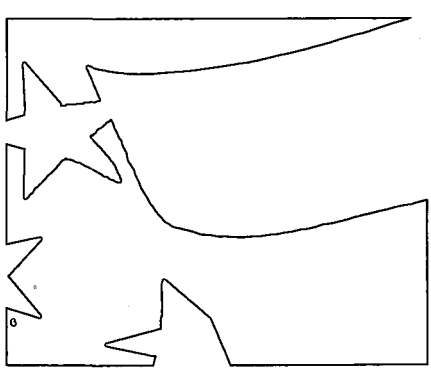

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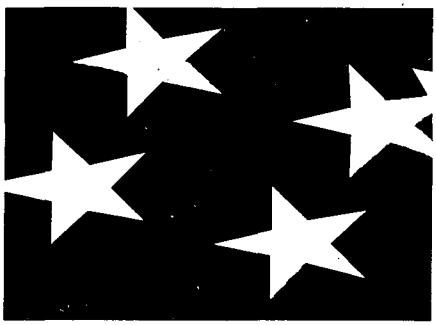

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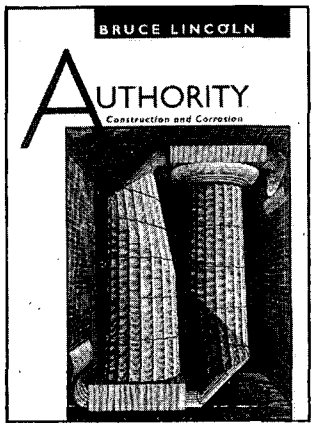

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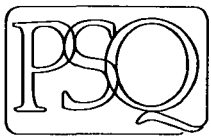

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